

## **EXHIBIT B**

D. SULLIVAN

Page 1

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No.  
97-cv-3496 (DRD) (MAS)

WALSH SECURITIES, INC., :

Plaintiff, :

vs. :

DEPOSITION OF:  
DONNA SULLIVAN

CRISTO PROPERTY MANAGEMENT,  
LTD., a/k/a G.J.L. LIMITED;  
OAKWOOD PROPERTIES, INC.;  
NATIONAL HOME FUNDING, INC.;  
CAPITAL ASSETS PROPERTY  
MANAGEMENT & INVESTMENT CO.,  
INC.; CAPITAL ASSETS PROPERTY  
MANAGEMENT, L.L.C.; WILLIAM  
KANE; GARY GRIESER; ROBERT  
SKOWRENSKI, II; RICHARD CALANNI;  
RICHARD DiBENEDETTO; JAMES R.  
BROWN; THOMAS BRODO; ROLAND  
PIERSON; STANLEY YACKER, ESQ.;  
MICHAEL ALFIERI, ESQ.; RICHARD  
PEPSNY, ESQ.; ANTHONY M.  
CICALESE, ESQ.; LAWRENCE CUZZI;  
ANTHONY D'APOLITO; DAP CONSULTING,  
INC.; COMMONWEALTH LAND TITLE  
INSURANCE CO.; NATIONS TITLE  
INSURANCE OF NEW YORK, INC.;  
FIDELITY NATIONAL TITLE  
INSURANCE CO. OF NEW YORK;  
COASTAL TITLE AGENCY; DONNA  
PEPSNY; WEICHERT REALTORS; and  
VECCHIO REALTY, INC., D/B/A  
MURPHY REALTY BETTER HOMES  
And GARDENS :

Defendants. :

- - - - -

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TRANSCRIPT of the stenographic notes of

2

the proceedings in the above-entitled matter, as

3

taken by and before JANET BAILYN, a Certified

4

Shorthand Reporter and Notary Public of the State of

5

New Jersey, held at the office of STONE & MAGNANINI,

6

150 John F. Kennedy Parkway, Short Hills, New Jersey,

7

on May 27, 2010, commencing at 10:10 in the forenoon.

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1

APPEARANCES:

2

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1

DONNA SULLIVAN, having been duly sworn by

2

the Notary, testified as follows:

3

DIRECT EXAMINATION BY MR. MAGNANINI:

4

Q. Good morning, Miss Sullivan. How are

5

you?

6

A. Good morning. Fine thanks.

7

Q. I am Bob Magnanini, as I told you

8

before. I am an attorney for Walsh Securities, and

9

with me is Amy Wagner, another Walsh Securities

10

attorney. You understand you're here as a 30(b)6

11

representative for Commonwealth Land Title Insurance

12

Company?

13

A. Yes.

14

Q. And as a 30(b)6 you understand that

15

there's various topics that we're going to cover, and

16

you had the duty to educate yourself so you can

17

answer questions on each of the topics?

18

A. Correct.

19

Q. Have you seen the deposition notice that

20

we had sent out?

21

A. Yes.

22

Q. Let me just mark that.

23

A. With the list?

24

Q. With the topics listed.

25

(Commonwealth-1, Deposition Notice, is

2 (Pages 2 to 5)

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<p>1 received and marked for identification.)</p> <p>2 Q. Have you seen that before?</p> <p>3 A. Yes.</p> <p>4 Q. And I assume you went over that with</p> <p>5 your attorney and other people at Commonwealth?</p> <p>6 A. I did.</p> <p>7 Q. Did you also look at documents --</p> <p>8 A. Yes.</p> <p>9 Q. -- to prepare for the deposition?</p> <p>10 MR. KOTT: Excuse me for one second.</p> <p>11 Let him finish.</p> <p>12 Q. Actually I'll flip back. Have you ever</p> <p>13 been deposed before?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How many times?</p> <p>16 A. I think five, four, five.</p> <p>17 Q. In what capacity?</p> <p>18 A. Fact witness, just --</p> <p>19 Q. On behalf of Commonwealth or personally?</p> <p>20 A. One of the companies.</p> <p>21 Q. One of the companies. Okay. So you're</p> <p>22 the professional 30(b)6 witness?</p> <p>23 A. No, I have never done 30(b)6.</p> <p>24 Q. So having done a deposition there are</p> <p>25 some basic ground rules I'll just go over with you.</p>	<p>1 Commonwealth?</p> <p>2 A. I'm associate major claims counsel.</p> <p>3 Q. So you're actually an attorney?</p> <p>4 A. I am.</p> <p>5 Q. And where did you go to law school?</p> <p>6 A. Pepperdine University, School of Law.</p> <p>7 Q. In California?</p> <p>8 A. Yes.</p> <p>9 Q. Nice views.</p> <p>10 A. Yes.</p> <p>11 Q. When did you graduate?</p> <p>12 A. 1983.</p> <p>13 Q. And have you always worked for</p> <p>14 Commonwealth?</p> <p>15 A. No.</p> <p>16 Q. Could you just briefly trace your job</p> <p>17 history since law school?</p> <p>18 A. I worked for Ticor Title Insurance.</p> <p>19 Q. Where were they located?</p> <p>20 A. Various locations in New Jersey.</p> <p>21 Morristown, Hackensack, Newark. I spent time at each</p> <p>22 of the three branches.</p> <p>23 Q. What was your title or position?</p> <p>24 A. I was a title officer.</p> <p>25 Q. What does that entail?</p>
Page 7	Page 9
<p>1 As you know it's a question-and-answer session. The</p> <p>2 only -- one of the artificialities of it is it all</p> <p>3 has to be recorded by the court reporter. So as Mr.</p> <p>4 Kott says, if you wait until you let me finish, and</p> <p>5 sometimes my questions will meander, I will wait</p> <p>6 until you finish your answer, which I assume will not</p> <p>7 meander, if Mr. Kott did his job.</p> <p>8 Also it's your deposition or it's a</p> <p>9 deposition of Commonwealth, and you're the</p> <p>10 representative, so any time you want to take a break</p> <p>11 just let me know and we will take a break. The only</p> <p>12 time I would ask you not to take a break is if a</p> <p>13 question is pending.</p> <p>14 A. Okay.</p> <p>15 Q. So if you could answer the question and</p> <p>16 then take a break. And if you answer the question</p> <p>17 I'll assume you've understand it. If you don't</p> <p>18 understand the question, and the longer in the day it</p> <p>19 gets the more likely that is to occur, just let me</p> <p>20 know and I will rephrase it and then you can answer</p> <p>21 it.</p> <p>22 A. Okay.</p> <p>23 Q. And that's -- the last basic thing is</p> <p>24 your answers need to be verbal.</p> <p>25 Miss Sullivan, what's your position at</p>	<p>1 A. Actually when I started there they</p> <p>2 taught me how to do everything, judgment searches, I</p> <p>3 searched titles for a month in the courthouse, and</p> <p>4 then I would do the abstract of titles, draft the</p> <p>5 commitment, sometimes attend closings. Usually for</p> <p>6 mortgages over a million the bank would require</p> <p>7 somebody to attend the closing just to markup the</p> <p>8 commitment and record the documents.</p> <p>9 Q. Okay. Where did you work after Ticor?</p> <p>10 A. I worked briefly at a title agency.</p> <p>11 Century Intercounty Title.</p> <p>12 Q. When was that approximately?</p> <p>13 A. 1990, I believe.</p> <p>14 Q. What did you do at Century Title?</p> <p>15 A. I was a title officer there also.</p> <p>16 Q. Same or similar job responsibilities?</p> <p>17 A. Yes.</p> <p>18 Q. And I guess you didn't have a long</p> <p>19 tenure at Century Title?</p> <p>20 A. I think I was there six months.</p> <p>21 Q. Why did you leave?</p> <p>22 A. I was laid off.</p> <p>23 Q. And then what did you do job-wise</p> <p>24 thereafter?</p> <p>25 A. Took me a little while, but then I got a</p>

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<p>1 job as assistant state counsel at Commonwealth.  2 Q. You said state counsel?  3 A. Yeah, that's what they called it. We  4 did claims and underwriting at that point so it was  5 like assistant underwriting counsel and assistant  6 claims counsel.  7 Q. And where did you work physically?  8 A. Parsippany.  9 Q. When did you start there?  10 A. April of '91, I believe.  11 Q. And you have been at Commonwealth for  12 the last 19 years?  13 A. No. I was at Commonwealth for nine and  14 a half years. The position changed a little bit  15 because they separated claims and underwriting, and I  16 became the state claims counsel for Commonwealth  17 around '94. I left in 2000. I went to a title  18 agency, ABL Title in Springfield.  19 Q. Why did you leave?  20 A. I had an offer that might be better,  21 which I didn't quite follow through, but an  22 opportunity to become a partner in an agency over  23 time, and I was there for about two years and then I  24 left to go to Fidelity.  25 Q. And how long were you at Fidelity?</p>	<p>1 Q. And so you -- you're employed by  2 Fidelity but you're representing Commonwealth?  3 A. It's a complex structure. I even called  4 someone to ask who I'm employed by. Our paychecks  5 come from one entity, supposedly we're rented by  6 another entity, I don't know, but we consider  7 ourselves employees, I guess, of Fidelity National  8 Financial although we hold ourselves out as the  9 Fidelity National Title Group, at least on our  10 letterhead and correspondence, but that entity has no  11 employees I'm told and as --  12 Q. Fidelity National Title Group has no  13 employees?  14 A. No employees. That's what I'm told. In  15 my position you're considered an officer of each of  16 the title companies that parent companies own.  17 Q. How many title companies does Fidelity  18 National Title Group own?  19 A. I probably couldn't tell you that. I  20 could tell you some of the major ones.  21 Q. I would appreciate that.  22 A. Commonwealth -- I will give you full  23 names. Commonwealth Land Title Insurance, Lawyer's  24 Title.  25 Q. One of the defendants in this case is</p>
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<p>1 A. I have been at Fidelity, it will be  2 eight years in July.  3 Q. What's your -- what position did you  4 start at?  5 A. At Fidelity? Senior claims counsel.  6 Q. Okay. What's your current position?  7 A. Associate major claims counsel.  8 Q. What is the difference between claims --  9 senior claims counsel and associate major claims  10 counsel?  11 A. Well, senior claims counsel is part of  12 the general claims department. They had an office in  13 New York with a satellite in New Jersey, which was me  14 and a couple of other attorneys. In January of 2009  15 they closed the claims center in the northeast and  16 moved the claims to other parts of the country. So  17 they eliminated that entire office and position. The  18 only person remaining here was major claims counsel  19 so I was given a job working with major claims  20 counsel.  21 Q. How does Fidelity define major claims?  22 A. Exposures over a million. It could also  23 be other complex cases or things maybe with  24 precedential issues or political issues, you know,  25 something more complex than the average claim.</p>	<p>1 Commonwealth?  2 A. Yes.  3 Q. That entity?  4 A. Yes. There's Chicago Title, Fidelity  5 National Title, Nations Title, some that you don't  6 hear around here, I know Alamo Title, Ticor Title.  7 Q. No antitrust laws I guess in your  8 business.  9 A. Well, acquisition of Commonwealth and  10 Lawyers I guess was properly sanctioned by --  11 Q. By the FTC. So it really has become one  12 amorphous blob, which is what we complained about.  13 Okay.  14 When did Fidelity acquire Commonwealth?  15 A. December of 2008.  16 Q. Okay.  17 A. And actually I'm not sure. Technically  18 it was acquired by Fidelity. I think it was acquired  19 by Chicago Title.  20 Q. And when did Fidelity acquire Chicago  21 Title? Was it before or after?  22 A. Before.  23 Q. Okay. So I didn't understand. Chicago  24 was actually owned by the Fidelity Nations Title  25 Group and then it acquired Commonwealth?</p>

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1 A. I would have to almost check exactly how  
 2 it held --  
 3 Q. The structure?  
 4 A. I would like to say that Fidelity owned  
 5 Chicago. That's probably true, but that's something  
 6 I would have to actually probably confirm --  
 7 Q. Okay.  
 8 A. -- how it's held.  
 9 Q. What is Commonwealth Title's document  
 10 retention policy?  
 11 A. Today?  
 12 Q. Today.  
 13 A. Today, after the acquisition there was a  
 14 do not destroy order, so no documents were supposed  
 15 to be destroyed after the acquisition. As far as I'm  
 16 aware that's still in effect.  
 17 Q. From December of 2008?  
 18 A. Yes.  
 19 Q. What was the document retention policy  
 20 back in the -- I'll define this for you but the time  
 21 frame of the lawsuit was -- what we've alleged, what  
 22 plaintiff has alleged, the first frauds occurred in  
 23 the beginning of 1996, January, February time frame,  
 24 and they continued through the middle of June of  
 25 1997. And so what was Commonwealth's document

Page 15

1 retention policy during that time period?  
 2 A. I have not found a retention policy for  
 3 that period. I found a memo from 1999.  
 4 Q. Okay. What did that say?  
 5 A. That was seven years, and after seven  
 6 years from the last action taken on the claim file --  
 7 I'm talking claims department for this -- the file  
 8 could be -- could or should be destroyed.  
 9 Q. When does Commonwealth define a claim as  
 10 beginning or occurring?  
 11 A. As beginning? There's a strict  
 12 definition, but obviously when we receive notice of  
 13 it. The policy requires notice to be submitted in  
 14 writing to the company, the home office.  
 15 Q. And so if, for example, Walsh Securities  
 16 sent letters to Commonwealth in July of 1997, that  
 17 would be the beginning of the claim?  
 18 A. Yes.  
 19 Q. And then was there anything in the -- do  
 20 you still have the memo?  
 21 A. The memo for?  
 22 Q. The document retention policy.  
 23 A. From '99?  
 24 Q. '99.  
 25 A. Yeah, I have a copy of it.

Page 16

1 Q. Do you have it with you?  
 2 A. I do not.  
 3 Q. Okay. Can we get a copy?  
 4 A. Sure.  
 5 Q. Did the document retention memo say  
 6 anything about litigation?  
 7 A. In connection with the claim?  
 8 Q. The claim. Right.  
 9 A. It really deals with claims, so I assume  
 10 that would include any litigation, so the litigation  
 11 would be in the claim file.  
 12 Q. So Walsh, I believe, amended its  
 13 complaint in November of 1997 and asserted claims  
 14 against various entities including Commonwealth. So  
 15 those documents, at least as of the 1999 memo, should  
 16 have been preserved all the way through?  
 17 A. Correct.  
 18 Q. Okay. Do you know if any documents  
 19 relating to the claims or the litigation brought by  
 20 Walsh Securities have been destroyed?  
 21 A. I don't know that any have been  
 22 destroyed.  
 23 Q. What type of documents does Commonwealth  
 24 have related to the Walsh Securities either claim or  
 25 litigation?

Page 17

1 A. From reviewing some of the boxes that  
 2 were transferred to our office from Commonwealth, we  
 3 have the original claim file, when the claim letters  
 4 first came in.  
 5 Q. What else is in an initial claim file?  
 6 MR. KOTT: In an initial or the?  
 7 Q. An initial one I'll start with.  
 8 MR. KOTT: I object to the form but you  
 9 can go ahead and answer.  
 10 A. Often the initial claim file is the  
 11 claim file. This is more expansive than would fit in  
 12 one folder, but you would have the claim letter, you  
 13 would have a copy of the policy or commitment,  
 14 which -- you know, closing service letter, whatever  
 15 the claim is being based upon. If it didn't come in  
 16 with the claim letter it certainly would have been  
 17 requested. If there's litigation you have the  
 18 pleading, you know, you may have the agent's file  
 19 attached. Whatever investigation you had done, the  
 20 materials would be in there. You have the initial  
 21 claim report because there's also a report completed  
 22 for home office and entered into the claims system.  
 23 You might have financial information concerning  
 24 reserves. It really should encompass whatever you've  
 25 done in connection with the claim.

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 Q. And have you seen the claim file for 2 Walsh Securities either -- I don't know how you guys 3 would define it -- claim or litigation? 4 A. I found the initial file. I think after 5 a certain point a lot of things got separated into 6 Redwelds for pleadings and deposition transcripts and 7 correspondence, so it's not, you know, maybe in one 8 file like a smaller claim would be but there are 9 boxes of documents. 10 Q. Okay. And what else was in the initial 11 claim file that you found? 12 A. The initial correspondence from Walsh 13 and our responses to Walsh, the retention of McCarter 14 &amp; English documentation, correspondence from McCarter 15 &amp; English to Walsh prior to the filing of the suit. 16 I don't recall if the complaint was in there. It 17 might have been separated in a Redweld. And I don't 18 recall if the policies are in there because obviously 19 this encompassed many transactions and there seems to 20 be separate files set up for a lot of the individual 21 commitments. Sometimes the agent file appears to be 22 attached to those files that were set up for each 23 transaction. There's news articles, there's various 24 charts on the claims, things of that nature. 25 Q. Okay. You said that a claim file</p>	<p style="text-align: right;">Page 20</p> <p>1 in the Commonwealth file? 2 A. I think this was very preliminary. I 3 don't recall any written notes. Maybe had a news 4 article that had been circulated, I guess. You had 5 the claim letter, our response to the claim letter, 6 the September -- someone from Walsh brought all the 7 loan files to the office. We had retained McCarter &amp; 8 English I think at that point. McCarter &amp; English 9 sent some requests for additional documents. I don't 10 believe we ever got a response to that. Suit was 11 filed in November, so this all happened in a fairly 12 short period of time. 13 Q. And you said suit was filed in November. 14 What did Commonwealth do investigation-wise once the 15 suit was filed? Maybe the question is better 16 phrased: Did Commonwealth continue its investigation 17 once the lawsuit was filed? 18 A. Well, I am assuming that -- and again I 19 have to assume. I'm trying to recall something 20 that's maybe not documented in the file itself, but I 21 am assuming we began a review of some of the loan 22 files. I think we had to gather the agent's files 23 even to begin to get a handle on what properties were 24 involved and what happened. Once we turned it over 25 to McCarter &amp; English they were handling whatever</p>
<p style="text-align: right;">Page 19</p> <p>1 generally also has an investigation report? 2 A. Not a report but whatever materials 3 you've done. I mean, usually when you get a claim, 4 unless it's something that's obviously not covered on 5 its face, you're going to do some -- request some 6 documents or -- either from the insured or from the 7 agent to do your analysis of coverage. 8 Q. Was there -- are there any notes or -- 9 let me just ask this question: What type of 10 investigation did Commonwealth do, based on your 11 review of the file, after it was put on notice by 12 Walsh Securities? 13 A. I think the initial claim letter came in 14 in July '97. It looks like we followed within two 15 weeks or something -- or less with the request, I 16 believe it was for the loan document -- loan files, 17 because it was not a lot of detail or I don't know -- 18 I don't recall even if the policies were attached to 19 the initial claim letter. So we began, you know, 20 requests for documentation so we could begin an 21 investigation. 22 Q. Okay. 23 (A discussion takes place off the 24 record). 25 Q. So was there any sort of written notes</p>	<p style="text-align: right;">Page 21</p> <p>1 review was done, and I guess we were going to find 2 additional information through discovery. 3 Q. So as far as you know then Commonwealth 4 itself didn't do any further investigation into the 5 claims once the litigation was filed against it? 6 A. I'm not sure. I think that -- I think 7 there might have been conversations between the 8 company and Coastal Title when they were gathering 9 these files, and then there are different claims that 10 Walsh submitted. Walsh later then submitted claims I 11 think on individual transaction files for unrecorded 12 documents of that nature, and of course we were 13 getting additional files from Coastal Title and 14 reviewing those. And retained counsel actually under 15 reservation to actually cure some of the unrecorded 16 document claims so I don't know if that answers -- 17 Q. What I was trying to determine is: As 18 far as Commonwealth was concerned once the complaint 19 got filed the investigation was turned over to your 20 counsel? 21 A. I think Walsh never responded I guess to 22 that letter of Mr. Kott's of September, so I think we 23 never got further information from the insured and 24 then the litigation began, and I think, you know, 25 that took on its own life.</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 Q. I guess, does the file contain a copy of</p> <p>2 Mr. Kott's September -- I would assume --</p> <p>3 A. Yes.</p> <p>4 Q. -- 1997 letter? Okay. And then --</p> <p>5 because you said Walsh Securities did provide all the</p> <p>6 loan documents to you?</p> <p>7 A. They provided loan files, yes.</p> <p>8 Q. And when was that?</p> <p>9 A. September.</p> <p>10 Q. And Mr. Kott -- do you recall what Mr.</p> <p>11 Kott's letter asked for beyond that?</p> <p>12 A. Additional documentation. I'm not sure</p> <p>13 if it went toward underwriting procedures. I'm</p> <p>14 guessing at this. So I think I would have to see the</p> <p>15 letter itself.</p> <p>16 Q. But the letter is still in the file?</p> <p>17 A. Yes, it is.</p> <p>18 Q. And how do you know that or how does --</p> <p>19 sorry, when I say you, I mean Commonwealth from now</p> <p>20 on.</p> <p>21 A. Okay.</p> <p>22 Q. Okay? I just wanted to get your</p> <p>23 background, which was just you, and now I'll define</p> <p>24 you as Commonwealth.</p> <p>25 How did Commonwealth or how does</p>	<p style="text-align: right;">Page 24</p> <p>1 not sure Stern Lavinthal was representing Walsh at</p> <p>2 that time so --</p> <p>3 MR. KOTT: So you're backtracking that</p> <p>4 you got claims from Walsh. Is that what I'm hearing?</p> <p>5 A. A little bit, although I'm not sure</p> <p>6 there weren't some directly from Walsh because I</p> <p>7 think we got from Walsh and Stern Lavinthal.</p> <p>8 Q. I can represent to you that Stern</p> <p>9 Lavinthal, as far as I know, was retained by Walsh</p> <p>10 Securities to attempt to foreclose on these</p> <p>11 properties.</p> <p>12 A. Okay.</p> <p>13 Q. So letters you would have gotten from</p> <p>14 Stern Lavinthal would have been on behalf of Walsh</p> <p>15 Securities.</p> <p>16 MR. KOTT: Bob, I would never challenge</p> <p>17 your representations, but I had a different</p> <p>18 understanding, and maybe what you said is true, but I</p> <p>19 had an understanding that Stern Lavinthal was</p> <p>20 retained by Temple Inland who was servicing these</p> <p>21 mortgages for Bankers Trust as corporate trustee.</p> <p>22 But I am not representing that but that's --</p> <p>23 MR. MAGNANINI: I know Walsh retained</p> <p>24 and paid Stern Lavinthal --</p> <p>25 MR. KOTT: Okay.</p>
<p style="text-align: right;">Page 23</p> <p>1 Commonwealth or you know that what Mr. Kott had</p> <p>2 requested was not provided?</p> <p>3 A. I didn't see that in the file and I've</p> <p>4 asked counsel.</p> <p>5 Q. You said that at some point later in</p> <p>6 time Walsh Securities had asked that Commonwealth</p> <p>7 investigate the specific loan files concerning</p> <p>8 unrecorded documents?</p> <p>9 A. Yes.</p> <p>10 Q. Now, when was that?</p> <p>11 A. I believe it was in 1998 that those</p> <p>12 letters -- there were a series or different letters.</p> <p>13 It wasn't all in one, you know, claim letter. I</p> <p>14 believe they were all in '98.</p> <p>15 Q. Who were those letters from?</p> <p>16 A. I'm not sure if -- I say Walsh and now</p> <p>17 I'm not sure. I think some were from Walsh, but some</p> <p>18 could have been from a foreclosure firm.</p> <p>19 Q. A law firm?</p> <p>20 A. Stern Lavinthal.</p> <p>21 Q. Stern Lavinthal. Okay.</p> <p>22 A. I don't know if they were both or one or</p> <p>23 the other. I think certainly Stern Lavinthal may</p> <p>24 have had some of them because we did have a lot of</p> <p>25 communication with Stern Lavinthal in which case I'm</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. MAGNANINI: -- to try and foreclose.</p> <p>2 Q. How many loans did they write you about?</p> <p>3 "You" being Commonwealth again.</p> <p>4 A. I don't have the number for that.</p> <p>5 Q. What was done as a result of the</p> <p>6 correspondence or the claims made by Stern Lavinthal?</p> <p>7 A. As far as unrecorded documents, we made</p> <p>8 a decision that while we weren't going to admit</p> <p>9 liability obviously while the rest of the litigation</p> <p>10 was ongoing and we had not made any decisions on</p> <p>11 coverage, we thought it was in the best interest of</p> <p>12 everyone to, you know, mitigate potential additional</p> <p>13 exposure by getting these documents on record, if we</p> <p>14 could, at limited expense. It would preserve at</p> <p>15 least the value of the property. The property</p> <p>16 couldn't be, you know, conveyed or otherwise financed</p> <p>17 without the mortgage of record.</p> <p>18 So we retained counsel, and I don't know</p> <p>19 if in some instance we were able to locate originals</p> <p>20 or we had to actually file suit to establish the lien</p> <p>21 but we did that on a number of cases.</p> <p>22 Q. Do you know about how many cases?</p> <p>23 A. It's a guess.</p> <p>24 Q. Another instruction that we always</p> <p>25 forget until the witness actually reminds us is: I</p>

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<p style="text-align: right;">Page 26</p> <p>1 would ask you not to guess.</p> <p>2 Does Commonwealth still have the files</p> <p>3 related to those claims made by Stern Lavinthal?</p> <p>4 A. Yes.</p> <p>5 Q. You testified previously that documents</p> <p>6 were recorded. Were there -- any of those claims was</p> <p>7 any money paid out on?</p> <p>8 A. To my knowledge no money was paid</p> <p>9 directly to an insured. Obviously money was paid to</p> <p>10 retain counsel and money was paid to later record the</p> <p>11 documents.</p> <p>12 Q. Right. Okay. That was my question.</p> <p>13 Was any money paid to any insured?</p> <p>14 A. I have not seen that in my research.</p> <p>15 Q. So as far as you know all of the claims</p> <p>16 presented were resolved?</p> <p>17 A. Unrecorded document claims?</p> <p>18 Q. Unrecorded document claims.</p> <p>19 A. Again, I have not gone through, now 13</p> <p>20 years later, whatever, each of those files. I'm</p> <p>21 assuming at the time that we addressed each of them.</p> <p>22 I don't recall but that's a long time that there</p> <p>23 were -- that we couldn't resolve, and I don't know</p> <p>24 what might have come in -- some of this I'm doing</p> <p>25 from my own recollection of seeing files back then</p>	<p style="text-align: right;">Page 28</p> <p>1 the exhibits later.</p> <p>2 Did you also meet with your agent,</p> <p>3 Coastal Title?</p> <p>4 A. I don't believe I did.</p> <p>5 Q. Who did?</p> <p>6 A. I believe I saw something in the file</p> <p>7 that Nancy Koch did.</p> <p>8 Q. And that's K-o-c-h?</p> <p>9 A. That's correct.</p> <p>10 Q. Does she still work at --</p> <p>11 A. No.</p> <p>12 Q. -- Fidelity Nations Group? Do you know</p> <p>13 where she is?</p> <p>14 A. Yes.</p> <p>15 Q. Where is she now?</p> <p>16 A. Old Republic Title.</p> <p>17 Q. Where is that?</p> <p>18 A. Parsippany.</p> <p>19 MR. MAGNANINI: Off the record.</p> <p>20 (A discussion takes place off the</p> <p>21 record).</p> <p>22 (A recess takes place.)</p> <p>23 Q. Miss Sullivan, what's your understanding</p> <p>24 of the lawsuit that Walsh Securities has filed</p> <p>25 against Commonwealth?</p>
<p style="text-align: right;">Page 27</p> <p>1 when I worked at Commonwealth, but I don't know if</p> <p>2 there were any left undone. I think we attempted to</p> <p>3 get them all done and I don't recall that not being</p> <p>4 done.</p> <p>5 Q. Okay. That's actually what my next</p> <p>6 question was, and this is flipping out of the</p> <p>7 Commonwealth you, back to you as Donna personally.</p> <p>8 When you were at Commonwealth did you work on the</p> <p>9 claims made by Walsh Securities?</p> <p>10 A. I did.</p> <p>11 Q. And what was your -- as a claims</p> <p>12 officer?</p> <p>13 A. A claims counsel, yeah.</p> <p>14 Q. Claims counsel. Okay. And did you</p> <p>15 conduct any of the investigation yourself?</p> <p>16 A. The limited investigation. I mean I</p> <p>17 wrote the letters to Walsh. I retained the counsel</p> <p>18 to cure the unrecorded document claims and</p> <p>19 corresponded with Stern Lavinthal. I collected the</p> <p>20 files from Coastal Title, some of them, you know,</p> <p>21 worked on that going back and forth when a claim</p> <p>22 letter would come in and we didn't have the file for</p> <p>23 a particular property so I did work on some of those</p> <p>24 initially.</p> <p>25 Q. Okay. Then you will recognize some of</p>	<p style="text-align: right;">Page 29</p> <p>1 A. I believe it's for breach of contract</p> <p>2 for failure to address the claims in a timely</p> <p>3 fashion.</p> <p>4 Q. And so you've seen the Fourth Amended</p> <p>5 Complaint?</p> <p>6 A. I did.</p> <p>7 Q. I guess actually you've known about the</p> <p>8 lawsuit since it was filed back in 1997?</p> <p>9 A. I did but I took a ten-year break when I</p> <p>10 left Commonwealth.</p> <p>11 Q. As did we when the judge</p> <p>12 administratively terminated it. And then were you</p> <p>13 aware that this case was sent to mediation in 2006?</p> <p>14 A. No.</p> <p>15 Q. Okay. Have you seen any of the</p> <p>16 documents that were submitted to Commonwealth by</p> <p>17 Walsh Securities in the course of the mediation?</p> <p>18 A. I don't recall seeing that.</p> <p>19 Q. Do you recall seeing any correspondence</p> <p>20 with lists of loans that Walsh has alleged are part</p> <p>21 of the fraud that were insured by Commonwealth?</p> <p>22 A. I've seen initial charts from the early</p> <p>23 '90s. You know, I don't know if there's been</p> <p>24 revisions or which ones you're referring to but I</p> <p>25 have seen some charts.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. And are those charts in Commonwealth's 2 files?</p> <p>3 A. Yes.</p> <p>4 Q. You testified earlier that you spoke to 5 Mr. Kott to prepare for the deposition as a 30(b)6 6 witness. Who else did you speak with?</p> <p>7 A. I spoke to several people in the company 8 to get information that might pertain to some of the 9 questions. Do you want me to just go through a list?</p> <p>10 Q. If you can, please.</p> <p>11 A. If I can off the top of my head. I 12 spoke to Gary Hamm, briefly to Nancy Koch, I spoke to 13 John Waters, Matthew Rini, Larry Feinberg. I spoke 14 to -- or e-mailed two people in the accounting 15 department in home office whose names I don't recall. 16 I think that's -- and perhaps Vincent Sharkey who I 17 work with.</p> <p>18 Q. What is Mr. Sharkey's position?</p> <p>19 A. Major claims. I don't know what his 20 exact title is. He's not a member of the bar. 21 His -- he is part of the office of the general 22 counsel.</p> <p>23 Q. What do you mean when you say he's not a 24 member of the bar? Is he not an attorney?</p> <p>25 A. He was but he resigned his membership.</p>	<p style="text-align: right;">Page 32</p> <p>1 no longer works at Commonwealth?</p> <p>2 A. Correct.</p> <p>3 Q. She was involved in the original 4 investigation?</p> <p>5 A. Yes.</p> <p>6 Q. And then Mr. Waters, what is his 7 position?</p> <p>8 A. John Waters is -- I'm not sure of the 9 title again, but it's major claims counsel in home 10 office in Jacksonville.</p> <p>11 Q. Florida?</p> <p>12 A. Yes.</p> <p>13 Q. What topics did you speak to Mr. Waters 14 about? I don't know if you need to refer to the 15 Schedule A.</p> <p>16 A. I contacted him -- he was formerly with 17 Commonwealth. So I contacted him regarding whether 18 there was a claims manual and whether -- as to, you 19 know, what their retention policy might have been. I 20 think those were the two things that I addressed with 21 him.</p> <p>22 Q. Was there a Commonwealth claims manual 23 in 1997?</p> <p>24 A. Yes.</p> <p>25 Q. Do you still have that?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Was -- why did he resign?</p> <p>2 A. Part of the agreement with the firm.</p> <p>3 MR. KOTT: Are you sure he withdrew with 4 the Supreme Court as an attorney?</p> <p>5 THE WITNESS: Am I mischaracterizing it?</p> <p>6 MR. KOTT: I think that's what Mr. 7 Magnanini is thinking.</p> <p>8 A. He voluntarily --</p> <p>9 MR. KOTT: He retired. He retired from 10 his law firm. I normally don't do this, Bob, but I 11 think she misspoke and I didn't want you to get --</p> <p>12 Q. Right.</p> <p>13 A. Not a negative connotation.</p> <p>14 MR. KOTT: I think Mr. Sharkey is still 15 a member in good standing of the bar.</p> <p>16 Q. Just because of this case every time I 17 see lawyers who aren't members anymore I'm like -- I 18 was just wondering. What is Mr. Hamm's position?</p> <p>19 A. I believe his title is now area counsel.</p> <p>20 Q. What does that entail?</p> <p>21 A. I'm trying -- well, I think it's a new 22 position. I'm not sure if it's for Lawyer's Title 23 and Commonwealth. I believe it may be. And I think 24 it's an underwriting counsel position.</p> <p>25 Q. And Miss Koch you have already testified</p>	<p style="text-align: right;">Page 33</p> <p>1 A. I have John's copy on loan.</p> <p>2 Q. Okay. But -- so we could actually 3 request a copy of it or we can get a copy if we 4 requested it?</p> <p>5 A. Assuming -- I don't know if there's any 6 privilege issues.</p> <p>7 MR. KOTT: Mr. Magnanini, what might be 8 best is if you just write me a letter.</p> <p>9 MR. MAGNANINI: That's why I'm asking.</p> <p>10 MR. KOTT: Obviously as the witness said 11 we're not agreeing to produce anything. We will get 12 the letter and we will respond.</p> <p>13 MR. MAGNANINI: That's how it works.</p> <p>14 Okay.</p> <p>15 Q. And then you also mentioned a Matt -- I 16 didn't get his last name.</p> <p>17 A. Matthew Rini, R-i-n-i.</p> <p>18 Q. What is Mr. Rini's position?</p> <p>19 A. Again, I don't know his title. He was 20 part of the claims department. He was kept on after 21 the claims department closed. He does some work for 22 home office. The purpose of me contacting him was 23 that John Waters suggested he might know what 24 happened to the Land America claims website 25 information. After Land America acquired</p>

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<p style="text-align: right;">Page 34</p> <p>1 Commonwealth I think they ceased using the 2 Commonwealth manual and they had claims memoranda 3 online, and when we acquired them that website was 4 taken down, but Matt was able to provide me with some 5 of the memos that were on there, which included the 6 memo on the retention of documents in the claims 7 department for Commonwealth. 8 Q. When did Land America purchase 9 Commonwealth? 10 A. In December -- oh, Land America 11 purchased Commonwealth, I believe it may have been 12 February of '98, but '98 I think, and again may have 13 been Lawyers purchasing Commonwealth. I am never 14 sure exactly how they're structured, but Land America 15 became I think the holding company for the two. 16 Q. Then who was Larry Feinberg? 17 A. Larry Feinberg is regional underwriting 18 counsel for Chicago Title. 19 Q. I assume responsible for a region that 20 includes New Jersey? 21 A. Yes. 22 Q. What did you speak to him about? 23 A. The changing of the closing protection 24 letter to the closing service letter and the time 25 period that happened in.</p>	<p style="text-align: right;">Page 36</p> <p>1 Commonwealth, and then when he left I think Nancy 2 became underwriting counsel, but I can't find one 3 place where I can go and look for underwriting 4 memoranda. So I checked with her to see if she could 5 tell me what happened to them. 6 Q. Those are Commonwealth underwriting 7 memoranda? 8 A. Yes. 9 Q. What do they consist of? 10 A. Those would have been underwriting memos 11 sent to the branches and agents with regard to 12 various topics that -- you know, instructions maybe 13 on how to deal with specific issues. 14 Q. So they were actually produced by 15 Commonwealth and sent to their agents? 16 A. Yes. 17 Q. Were you able to locate the underwriting 18 memoranda after 1994? 19 A. Not in one location. She thought there 20 was a binder, which we haven't found. I understand 21 that some memoranda may be filed in the subject 22 matter files along with other materials on that 23 subject. You may find them in there, but I don't 24 have a central location for something. You have to 25 go hunting.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What do you mean by that, the changing 2 to the closing protection letter? 3 A. The closing protection letter was one 4 form of letter, which was later amended, and a new 5 form filed with the Department of Insurance was 6 issued. 7 Q. When did that occur? 8 A. August first, '94. 9 Q. Why was it changed? 10 A. It was changed in response to some of 11 the decisions in the Sears mortgage case and Klein 12 security fund case. This is again my understanding. 13 There might have been other reasons but... 14 Q. So in response to court rulings. New 15 Jersey -- I think they're both New Jersey state court 16 cases. 17 A. Yes. 18 Q. And what did you speak to Nancy Koch 19 about? 20 A. I was trying to identify where some of 21 the underwriting memos would have been kept because I 22 have not been able to find a single location for 23 underwriting memos between '94 and when we purchased 24 Commonwealth. There were volumes prior to '94 when 25 one underwriting counsel was in charge of</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Were you able to determine why there was 2 no central location for the post '94 underwriting 3 memos? 4 A. She said there was a binder but we have 5 not been able to find that binder. The person that 6 might have been in charge of that binder has also 7 left the company. 8 Q. And what did you speak to Gary Hamm 9 about? 10 A. Gary -- I started initially and -- I 11 think I started with him on retention. I discussed 12 the filing of the revised -- the closing service 13 letter. He was looking for some memoranda on that. 14 I'm trying to think what else. Maybe also on the 15 issuing of closing protection letters, closing 16 service letters, the conditions. 17 Q. The conditions. Okay. As part of your 18 preparation, did you review Commonwealth's Answers to 19 Interrogatories propounded by Walsh Securities? 20 A. Are these from years ago? I think I 21 looked at one set. 22 Q. Years ago can be relative. I think 23 they're actually from 2005. 24 (Commonwealth-2, Answers to 25 Interrogatories, is received and marked for</p>

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<p style="text-align: right;">Page 38</p> <p>1 identification.)</p> <p>2 Q. Miss Sullivan, I would ask you to look</p> <p>3 at Exhibit 2, which is Defendant Commonwealth's</p> <p>4 Response to Plaintiff's First Set of Interrogatories</p> <p>5 to Title Insurance Defendants.</p> <p>6 A. Okay.</p> <p>7 Q. Could you turn to page nine? There's a</p> <p>8 certification. Whose signature is that?</p> <p>9 A. Virginia Moran.</p> <p>10 Q. Does Miss Moran still work at</p> <p>11 Commonwealth?</p> <p>12 A. No.</p> <p>13 Q. Do you know where she is?</p> <p>14 A. Yes.</p> <p>15 Q. Where is she?</p> <p>16 A. She's at a law firm, Purcell Ries. I'm</p> <p>17 not sure of the full name.</p> <p>18 Q. Did you contact her in preparation for</p> <p>19 this deposition?</p> <p>20 A. I did not.</p> <p>21 Q. Do you know why she was the Commonwealth</p> <p>22 person who signed the certification?</p> <p>23 A. Well, Virginia was in charge of the</p> <p>24 claims department in Parsippany and I believe she</p> <p>25 handled this case.</p>	<p style="text-align: right;">Page 40</p> <p>1 initially she was underwriting counsel for one brand,</p> <p>2 but after '94 she was for Commonwealth as well. So</p> <p>3 she was underwriting counsel, and she was also, I</p> <p>4 believe, the agency manager. So she would have the</p> <p>5 relationship with the agent and would be the one who</p> <p>6 monitored that relationship.</p> <p>7 So I imagine if a claim came in,</p> <p>8 obviously she would be advised or aware of it, and I</p> <p>9 think she was aware of this already from prior</p> <p>10 articles and information in the papers. So whether</p> <p>11 she went to meet with him -- again, I'm speculating</p> <p>12 what exactly the purpose of that.</p> <p>13 Q. Okay. And you said there were documents</p> <p>14 received from Coastal. What were those documents?</p> <p>15 A. We were requesting their files for the</p> <p>16 transaction, you know, the title insurance file.</p> <p>17 Q. And so -- do you know if you received</p> <p>18 all of the files from Coastal?</p> <p>19 A. I believe we received most of the files.</p> <p>20 I'm not sure -- I'm not sure -- I think we received</p> <p>21 most of them. I'm not sure all of them are in my</p> <p>22 possession or some of them are. I guess others may</p> <p>23 have been deposited in whatever the repository, I'm</p> <p>24 not sure, but I believe that we got the majority of</p> <p>25 them.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. This case. Okay. Could you turn to</p> <p>2 page seven, the response to Interrogatory Number 17.</p> <p>3 It says there that Nancy Koch, who we previously</p> <p>4 discussed, met with Robert Agel of defendant Coastal</p> <p>5 Title after the claim was received. And you said --</p> <p>6 I never asked this specific question. Did you see</p> <p>7 any notes in the file from Miss Koch's meeting with</p> <p>8 Mr. Agel?</p> <p>9 A. I did not.</p> <p>10 Q. Did you discuss Miss Koch's meeting with</p> <p>11 Mr. Agel as part of your preparation for this</p> <p>12 deposition?</p> <p>13 A. I did not.</p> <p>14 Q. Do you know what the purpose of Miss</p> <p>15 Koch meeting with Mr. Agel was?</p> <p>16 A. I would be speculating.</p> <p>17 Q. Again, I would ask you not to do that.</p> <p>18 Miss Koch, though, was involved in the investigation</p> <p>19 on behalf of Commonwealth?</p> <p>20 A. She was agency counsel.</p> <p>21 Q. What does that mean?</p> <p>22 A. She would be the underwriting counsel</p> <p>23 that dealt with the agents. I think she was also the</p> <p>24 agency manager. Actually this was Commonwealth.</p> <p>25 Right? But it was '97. Yes. So she would have --</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Did you get any other documents from</p> <p>2 Coastal besides the files related to the loans?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. And then the next section of</p> <p>5 Interrogatory 17 says that Virginia Moran of</p> <p>6 Commonwealth and Mr. Kott and Mr. McGowan met with</p> <p>7 Mr. Skowrenski and his attorney, Mr. Schottland.</p> <p>8 What was the purpose of those meetings?</p> <p>9 A. I am assuming this was litigation, but</p> <p>10 again I wasn't there at the time this happened and I</p> <p>11 don't believe -- so I think this was in connection</p> <p>12 with the Skowrenski litigation. It says -- at least</p> <p>13 it says that in the answer to the Interrogatory.</p> <p>14 Q. At Mr. Skowrenski's deposition he</p> <p>15 testified that that litigation was settled by Coastal</p> <p>16 Title and Commonwealth for, I believe he testified, a</p> <p>17 total of \$300,000, with Coastal Title paying \$250,000</p> <p>18 and Commonwealth paying 50,000. Is there anything in</p> <p>19 Commonwealth's files dealing with the Skowrenski</p> <p>20 litigation?</p> <p>21 A. There's information with respect to</p> <p>22 Commonwealth's settlement and the settlement for</p> <p>23 50,000. I don't recall seeing anything about</p> <p>24 Coastal's. That amount is new to me. If there was</p> <p>25 something there I didn't see it in the file.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Q. Would Commonwealth normally see in its 2 files a settlement by one of its agents if 3 Commonwealth was also involved in the litigation? 4 A. If it was all part of the same 5 settlement agreement? 6 Q. Yes. 7 A. I think -- I am assuming -- I think the 8 settlement agreement is in there so these must have 9 been separate agreements. I am assuming, because I 10 don't think it was part of the documents that I read. 11 So that would be a different circumstance. Obviously 12 if it was all one, it would be in there. 13 Q. And Commonwealth has retained all of the 14 documents relating to the Skowrenski litigation or 15 settlement? 16 A. Again, there's a file for that and 17 whether that's all of them, you know, I have to 18 guess. 19 Q. You don't know at this point? 20 A. Yeah. 21 Q. When was that settlement? 22 A. I don't recall the year. 23 Q. Okay. Do you know why Commonwealth 24 settled with Skowrenski and his company, NHF, or 25 National Home Funding?</p>	<p style="text-align: right;">Page 44</p> <p>1 files are all there. 2 Q. Okay. And so how many loan files, not 3 the number, by type, does Commonwealth have? You 4 said Walsh Securities had produced some. You said 5 you had received loan files from your agent, Coastal 6 Title. 7 MR. KOTT: That's not correct. Not loan 8 files. 9 Q. Sorry. 10 MR. KOTT: Agency files. 11 Q. Agency files. Did you receive any other 12 files or does Commonwealth have any other files 13 relating to these, I'll say, mortgages at issue in 14 this suit? 15 A. That's the only other source of files 16 that -- from outside parties that we would have had. 17 Q. You received. Okay. Going back to 18 Exhibit 2, do you know if anybody other than Miss 19 Moran and counsel participated in answering those 20 Interrogatories? 21 A. I don't know. 22 Q. This may be difficult but going back to 23 1996, '97 time frame could you explain the structure 24 of Commonwealth? 25 A. As far as like the hierarchy in the</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I would be speculating again. 2 Q. There's nothing in the file that would 3 inform your answer? 4 A. I don't recall that I've seen anything 5 that documents why. I mean, obviously it's an amount 6 that's worth some compromise just for the expense of 7 the litigation. If there's other things, you know, I 8 don't know. 9 Q. Okay. As part of your preparation did 10 you review the title policies or closing protection 11 letters? 12 A. Not all of them obviously, but I've 13 looked at -- I've looked at commitments, closing 14 service letters. I'm not sure I found policies 15 actually. I guess there are policies issued on some 16 of them and -- maybe in some of the files, but most 17 of the files that we had handy were the unrecorded 18 document claims. They only had commitments in them. 19 Q. Did you look at any of the other loan 20 files that Walsh Securities had provided? 21 A. I don't think we have the loan files in 22 our possession any longer. I know they were produced 23 at some point, but we have a series -- we have 24 several, several, maybe 15 boxes that we have been 25 trying to go through, but I don't think the loan</p>	<p style="text-align: right;">Page 45</p> <p>1 claims department or what kind of structure? 2 Q. In the company. Like which department 3 issued -- 4 A. How we do business? 5 Q. How you do business. 6 A. For New Jersey? 7 Q. For New Jersey, which I assume is 8 different than other parts of the country. 9 A. I can't speak for other parts because I 10 didn't have exposure to other parts when I was at 11 Commonwealth, but if you're talking about the state 12 structure, there was a state manager and then there 13 was the agency manager and underwriting counsel and 14 they would have support staff. 15 Q. What did the underwriting counsel do? 16 A. They might advise the agents or the 17 branches if there were -- if there was a new case or 18 law, you know, that required us to do something 19 different in our underwriting practices, or maybe 20 some types of state regulations for agencies. I 21 guess anything that might have changed that way. So 22 they would update them on things that they should 23 know. They may send out reminder memos. You know, 24 if you see a certain thing is becoming an issue, to 25 remind agents to do a certain practice. If there</p>

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<p style="text-align: right;">Page 46</p> <p>1 were changes in recordings or affidavits or, you  2 know, whatever, they would want to keep them advised  3 as to how they should be conducting that part of the  4 business.  5 They also provided assistance if an  6 agent or a branch was underwriting a deal that had  7 some kind of questionable matter, whether to insure  8 or how to work with an issue to protect the company  9 and provide insurance, they would discuss that with  10 underwriting counsel. Underwriting counsel usually  11 had to review high liability. Agent usually had an  12 authority limit. If it was above that they would  13 have to get underwriting counsel to approve before  14 insuring that transaction. I think those are --  15 Q. The basic job functions?  16 A. Functions, yeah.  17 Q. Does Commonwealth have any records of  18 communications between -- I won't say generally, but  19 Coastal Title Agency and its underwriting counsel in  20 1996, 1997 time frame?  21 A. I didn't ask that question. They may  22 have -- I think they have files on each agent and  23 that may deal with agency agreement issues. I'm not  24 sure what would be in that file. As I said, I think  25 for underwriting type memos, I'm not sure that they</p>	<p style="text-align: right;">Page 48</p> <p>1 using that existing '89 agreement.  2 Q. So that's still in effect today?  3 A. Yeah.  4 Q. With maybe -- I believe you had -- an  5 Annex A was a split.  6 A. You have seen it.  7 Q. It was -- Mr. Kott produced that.  8 A. I think that's the limit of what I've  9 seen.  10 Q. So other than that agreement --  11 A. Right. I separately contacted the  12 department now that collects the agency agreement  13 files, not the entire file that might be locally, but  14 with respect to agreements, termination letter, stuff  15 like that I have.  16 Q. And so Commonwealth continues to use  17 Coastal Title as its agent today?  18 A. I don't believe so. There was a  19 termination letter in 2000 in the file. I believe it  20 was 2000. I would have to check the year. It could  21 have been later than that. It could have been 2004.  22 I would have to check but I saw a termination letter.  23 Q. And Coastal Title has never been  24 reinstated?  25 A. It was not in the material that was</p>
<p style="text-align: right;">Page 47</p> <p>1 would put that memo in each agent file, that they  2 would keep that more centrally since it went to  3 everyone. So I'm not sure what would be -- I'm sure  4 the agency agreement and certain maybe audit issues  5 or things that pertain particularly to that agent  6 might be in a separate file.  7 Q. And you had previously testified that  8 there was an agency agreement between Commonwealth  9 and Coastal Title.  10 A. I don't know if I testified but yes,  11 there was.  12 Q. I thought you had said that in passing.  13 A. Okay.  14 Q. And as we've seen it, the agreement is  15 from 1989?  16 A. Yes.  17 Q. Was that agreement ever amended?  18 A. I believe there might have been a  19 change. It might have been -- I don't know if it was  20 to premium. There might have been. I would have to  21 go back and look. I have retained something from one  22 of the national offices that collects that  23 information for each agent. There was no, like,  24 substantial change to -- you know, as partners or  25 anything like that that I saw. It was pretty much</p>	<p style="text-align: right;">Page 49</p> <p>1 given to me. I could search -- I don't know if they  2 write for one of our other brands. It would be a  3 search of a different...  4 Q. Did the termination letter say why  5 Coastal Title was terminated?  6 A. I think it was a mutual termination.  7 There was no stated reason. Well, it's hard to  8 remember. I've read a lot of material in the last,  9 you know -- I would have to look. I don't think it  10 was a cause-type termination. It could have been low  11 remittances, something like that.  12 Q. Does Commonwealth still have a copy of  13 the termination letter?  14 A. Yes.  15 Q. Going back to Commonwealth and 1996,  16 1997, which department issued -- which may not be the  17 right word and feel free to correct me -- title  18 policies and closing protection letters?  19 MR. KOTT: Object to the form.  20 A. Of the company, the company?  21 Q. Of the company.  22 A. The company doesn't issue unless they  23 have a branch office that's dealing directly with  24 writing insurance. Talking about does the agent  25 produce the policy?</p>

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<p style="text-align: right;">Page 50</p> <p>1 Q. Policy, right.</p> <p>2 A. Closing service letter.</p> <p>3 Q. And what department within Commonwealth</p> <p>4 dealt with the agent such as Coastal Title who</p> <p>5 produced policies and closing protection letters?</p> <p>6 A. Like agency department or the agency</p> <p>7 manager.</p> <p>8 Q. That's what it was called?</p> <p>9 A. Yeah, I guess that would be Nancy Koch's</p> <p>10 operation that would have...</p> <p>11 Q. Which department within Commonwealth</p> <p>12 received payments or payments of premiums for either</p> <p>13 title policies or closing protection letters?</p> <p>14 A. I believe from what I've read that they</p> <p>15 may have been sending those payments to -- they have</p> <p>16 an office in I think Louisville, National Processing</p> <p>17 Center.</p> <p>18 Q. Kentucky?</p> <p>19 A. Kentucky, yeah.</p> <p>20 Q. Louisville, Kentucky.</p> <p>21 A. From what I read it looks like that they</p> <p>22 were sending -- that sometimes they would either send</p> <p>23 a copy of the policy and maybe NPC would invoice</p> <p>24 them. This is not the part of the business I was or</p> <p>25 am really familiar with. Obviously it's credited to</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. That's what we have been trying to</p> <p>2 determine. Part of it we're having a dispute with</p> <p>3 counsel about production of documents which are</p> <p>4 Commonwealth's documents. Their title policy, their</p> <p>5 commitments, their closing protection letters and</p> <p>6 they're issued by -- or I guess it's more proper,</p> <p>7 they're issued in the name of Commonwealth?</p> <p>8 A. Commonwealth doesn't actually -- if they</p> <p>9 have produced a form, they don't issue the policy. I</p> <p>10 believe that policies could be sent to NPC. I think</p> <p>11 the only way, at least when I was there, that you</p> <p>12 could access them is if you actually knew the policy</p> <p>13 number. It doesn't apply to commitments. I probably</p> <p>14 don't have all the answers on how they track that. I</p> <p>15 know in the old days they would be numbered, and you</p> <p>16 would want to go in and get an accounting for those</p> <p>17 jackets if you terminated someone and retrieve them.</p> <p>18 Q. So you're saying, though, Commonwealth</p> <p>19 did not know what commitments Coastal Title would</p> <p>20 issue, you would --</p> <p>21 A. For instance, would the manager in New</p> <p>22 Jersey know what they wrote last month?</p> <p>23 Q. Right.</p> <p>24 A. They might have seen remittances. I'm</p> <p>25 sure they had to track their income, but would they</p>
<p style="text-align: right;">Page 51</p> <p>1 the agency department in New Jersey, but it sounds</p> <p>2 like it might have been remitted through a central</p> <p>3 office.</p> <p>4 Q. How did Commonwealth know, or maybe</p> <p>5 track is a better word, what policies or closing</p> <p>6 protection letters were issued by Coastal Title</p> <p>7 Agency?</p> <p>8 A. I'm trying to remember from some things</p> <p>9 that I read. I'm not sure if NPC actually sent out</p> <p>10 numbered forms or whether just jackets were</p> <p>11 distributed. Usually there's some numbering of the</p> <p>12 policy that they have to account for. For instance,</p> <p>13 if you terminate an agent they go back and collect</p> <p>14 those jackets.</p> <p>15 Q. What do you mean by jackets?</p> <p>16 A. Policy jacket that has standard terms</p> <p>17 and conditions, exclusions, covered risks that the</p> <p>18 commitment or the then later policy are inserted into</p> <p>19 a jacket usually.</p> <p>20 Q. And those jackets had individual numbers</p> <p>21 on it?</p> <p>22 A. That's my belief at that time. I'm not</p> <p>23 sure when things got computerized. Things evolved,</p> <p>24 but I know there had to be a way, I guess, to track</p> <p>25 policies and remittances.</p>	<p style="text-align: right;">Page 53</p> <p>1 know that they issued a policy on X property? They</p> <p>2 would not be seeing any of that information. Now,</p> <p>3 whether an actual policy was stored in Louisville</p> <p>4 submitted by the agent, it's possible, but it was not</p> <p>5 being reviewed or necessarily seen by anybody. We</p> <p>6 don't see all the agents' commitments as they write</p> <p>7 them or even after they write them.</p> <p>8 Q. So when is the first time that</p> <p>9 Commonwealth would know that a title policy had been</p> <p>10 issued by one of its agents?</p> <p>11 A. Probably when they remitted their</p> <p>12 premium we would know that something --</p> <p>13 (A discussion takes place off the</p> <p>14 record).</p> <p>15 Q. When was the first time Commonwealth</p> <p>16 knew that its agent, Coastal Title, had issued a</p> <p>17 title insurance policy or closing protection letter?</p> <p>18 A. On a particular transaction? Obviously</p> <p>19 they knew they were issuing them as a regular --</p> <p>20 Q. Event. Right.</p> <p>21 A. They remitted a certain amount and we</p> <p>22 wouldn't in the normal course of business ever have</p> <p>23 those come into a local office or, you know, watch,</p> <p>24 you know, what specifically they're insuring or</p> <p>25 there's not that type of oversight of every</p>

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<p style="text-align: right;">Page 54</p> <p>1 transaction by the underwriter.  2 Q. Okay. So in some cases if they didn't  3 know -- well, would the underwriter, the Commonwealth  4 underwriter, know what specific properties the title  5 either policy or closing protection letter was issued  6 on?  7 A. At that time, no.  8 Q. Okay. So the first time --  9 A. Other than it might have been deposited  10 again in that Louisville office, which is probably  11 just a collection site and not somebody reviewing  12 them.  13 Q. And I have been asking the questions as  14 title policy and closing protection letter. Was  15 it -- it's the same process for the closing  16 protection letter as the title policy? The \$25 would  17 be remitted for the closing protection letter?  18 A. It would. I'm not sure that they were  19 collecting those letters at the time. I think I read  20 something where maybe they later actually assigned  21 numbers to closing service letters, but I'm not sure  22 of that. So something might have changed with  23 tracking them. Again, you're not going to see  24 oversight by them by a local office.  25 Q. Of individual letters?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. They were in the same office.  2 Q. And you were actually during that time  3 counsel to both the state manager, the --  4 A. When -- let's see, no. When I first  5 started -- maybe I'm getting you confused. In '96,  6 '97 my only role was state claims counsel.  7 Q. Just claims counsel?  8 A. By that point. It had changed in '94.  9 I didn't do underwriting after May or June of -- am I  10 getting the year right? '94. Then I went strictly  11 claims.  12 Q. Did Commonwealth have direct branches  13 that dealt with individual consumers?  14 A. They did.  15 Q. Did they have any in New Jersey?  16 A. Yes.  17 Q. Why did you also use agents?  18 A. I don't know the answer to that. I  19 mean, I'm sure -- you know, some business reasons,  20 financial. But...  21 Q. One of the agent's responsibilities was  22 getting customers for title policies issued by  23 Commonwealth?  24 A. Remitting premium.  25 Q. Remitting premium. Okay. That's what I</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Certainly the cost, the \$25 charge  2 should have been remitted.  3 Q. Why was that cost \$25?  4 A. That was -- from what I've read that was  5 what was approved by the State of New Jersey.  6 Q. And have they ever modified that or  7 increased the amount?  8 A. Not to my knowledge.  9 Q. Off the record.  10 (A discussion takes place off the  11 record).  12 Q. And then which department within  13 Commonwealth would process claims?  14 A. The claims department.  15 Q. Okay. Some of them are going to be  16 easy. And where was the claims department for  17 Commonwealth in 1996, 1997 that would handle claims  18 from New Jersey?  19 A. In 1996, 1997 it was in Parsippany.  20 Well, it was always in Parsippany but two different  21 sites, but during '96, '97, it was at the same site  22 where the state manager and agency manager were  23 located.  24 Q. So at that point the agency manager was  25 co-located with the claims?</p>	<p style="text-align: right;">Page 57</p> <p>1 was getting at. I wanted to -- I knew there was a  2 bottom line to it.  3 A. It's a business.  4 Q. And then could you explain how the  5 process of title insurance is ordered?  6 A. In the branch or agency situation?  7 Q. In this case we will limit it to New  8 Jersey in 1996, '97 with an agent like Coastal Title.  9 Not that Marty is the agent but I was pointing in  10 that direction.  11 A. I think in most instances, and I'm  12 trying to think Coastal because it varies north,  13 south also.  14 Q. Coastal was considered north?  15 A. Given that they had Coastal service  16 letters here, and I think the usual source of  17 business is going to be attorneys that do real estate  18 transactions, and the agent will be out trying to  19 solicit business or develop relationships with  20 attorneys so that they have a source of business  21 and --  22 Q. And these attorneys, do they have to  23 be -- what I've seen on the letters are approved  24 attorneys?  25 A. Well, I think that term has been</p>

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<p style="text-align: right;">Page 58</p> <p>1 dropped. I don't think we refer to them as approved  2 attorneys any longer, but there are certain, I guess,  3 requirements before you can issue a closing service  4 letter to an attorney but they're pretty basic. They  5 have to be admitted in New Jersey, they have to be  6 not on -- we have an unapproved list for attorneys  7 that, you know, have -- you read the Law Journal and  8 if they have been disbarred or suspended, you know,  9 we add them to the list, or if we have had some  10 other, I guess, negative relationship with them we  11 can choose not to do business with them. And so they  12 shouldn't be issuing obviously to those people. You  13 know, there are certain parameters for transactions  14 that go along with what they should be issuing a  15 closing service letter, but for the attorney  16 themselves, if they're a member of the bar and, like  17 I said, in New Jersey, you know, familiar with  18 closings in New Jersey, it's a pretty basic  19 requirement, standard.  20 Q. Did the attorney have to apply to be --  21 I know you don't say approved anymore but back in  22 again '96, '97, how did an attorney --  23 A. I don't believe there was an application  24 per se or a form or there's not a submission to the  25 underwriter. They know that -- the agent should know</p>	<p style="text-align: right;">Page 60</p> <p>1 considers a title agency the closing agent. You  2 follow what I'm saying? Maybe in south Jersey but  3 not up here.  4 Q. Let me rephrase the question. So who  5 would order the title commitment initially? The  6 attorney or the title agent in north Jersey?  7 A. Well, if you're referring to the  8 commitment, if you're referring to the contract for  9 insurance, it's the attorney that's requesting that  10 on behalf of his client.  11 Q. Who would request the closing protection  12 letter?  13 A. Usually the lender would require that.  14 Q. And how was the -- who would then -- I  15 know the closing protection letter, at least the ones  16 we have seen, were prepared by the title agent.  17 MR. McGOWAN: Object to the form of that  18 question. They may have been signed by them. I  19 don't know who prepared them. It might be a form,  20 for example.  21 Q. You previously testified that on August  22 first, 1994, the closing protection letters were  23 changed?  24 A. Yes.  25 Q. And it was a new form, I think you said,</p>
<p style="text-align: right;">Page 59</p> <p>1 that these are the qualifications that -- you know,  2 obviously they have to be a member of the bar.  3 Q. So back in again 1996, '97, Commonwealth  4 had an unapproved list. Did it have an approved list  5 of attorneys?  6 A. No.  7 Q. Is there an application now for  8 attorneys to be approved?  9 A. Not to my knowledge.  10 Q. And so the attorney would then contact  11 the closing or the title agent to obtain title  12 insurance?  13 A. Yeah. Usually if they deal -- they  14 already had a relationship with an agent and they got  15 a closing transaction they needed insurance for, then  16 they would usually submit -- often agents would have  17 an order form. If they were dealing regularly with  18 someone, they would complete an order form or they  19 may call them on the phone.  20 Q. And then who would order the title  21 commitment? Would it be the attorney or the closing  22 agent?  23 MR. McGOWAN: Let me object to the form  24 of the question only because I don't know that you --  25 I don't know that anyone in the north Jersey practice</p>	<p style="text-align: right;">Page 61</p> <p>1 that was approved by the State of New Jersey. And  2 so --  3 A. Do I have the right year? I'm afraid  4 with all these years.  5 Q. You do.  6 A. '94?  7 Q. Yes.  8 A. Okay.  9 Q. If you know. I am not here to trick  10 you. You got enough people, if it's off and it's  11 significant they're going to say something. Was that  12 form, the closing protection letter in 1994, ever  13 modified?  14 A. After '94?  15 Q. After '94. Actually let me just --  16 could it be modified by a title agent?  17 A. It should not have been. It was a filed  18 form so...  19 Q. And could it have been modified by a  20 closing attorney?  21 A. It should not have been. They didn't  22 have authority to do that.  23 Q. Okay. And authority as Commonwealth's  24 agent?  25 A. Who?</p>

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## D. SULLIVAN

<p style="text-align: right;">Page 62</p> <p>1 Q. The closing -- the title agent. I keep 2 saying closing. I mean Coastal. I am trying to 3 limit it to this case. 4 A. Right. There's a form that the company 5 filed with the state. So the agent would not have 6 authority to authorize changes to that. 7 Q. Okay. 8 (A recess takes place.) 9 Q. Miss Sullivan, following up from a 10 couple of earlier questions, what were the agency 11 manager's responsibilities at Commonwealth in '96, 12 '97 time frame? 13 MR. McGOWAN: The Commonwealth agency? 14 Q. Commonwealth agency manager. 15 A. I am speaking in kind of general terms 16 because it's not a job I ever held but again I 17 think -- 18 Q. Again, I am just asking your testimony 19 on behalf of the company. 20 A. Right. I think they navigate the 21 relationship with the agent and, you know, they're 22 going to deal with issues with the agency agreement 23 or splits or whether they're getting enough money or, 24 you know, doing enough business, whether -- trying to 25 think. They may coordinate -- I think they have</p>	<p style="text-align: right;">Page 64</p> <p>1 underwriting of the -- that you said was done as part 2 of the audit? 3 A. Again, I'm kind of speculating on these 4 things, but probably -- I would imagine they would 5 look at searches, see how things were raised, the 6 exceptions were raised in the commitment and just I 7 guess quality of underwriting. 8 Q. So did they actually look at the title 9 agent's files? 10 A. Just a small sample. 11 Q. And then you said that one of the 12 responsibilities of the agency manager was to look at 13 remittances. Were there quotas or goals that the 14 title agents had to produce for Commonwealth each 15 month or each year? 16 A. Again, that probably changed over time 17 and I'm not sure, you know, if -- what might have 18 been a goal. Obviously we want them to remit some 19 business to be worth the servicing of that agent and 20 providing them with underwriting services and 21 everything else but I don't know of any specific 22 quotas. 23 Q. Okay. 24 A. Or that any were actually given to an 25 agent at that time. I mean, you know, this is going</p>
<p style="text-align: right;">Page 63</p> <p>1 audits. Maybe yearly they would have an audit, and 2 I'm sure they were involved, or at least I think -- 3 maybe it was a separate department, but I am sure it 4 was coordinating with the agency manager because 5 Nancy kind of wore two hats. She probably did some 6 underwriting, but as the manager function I think 7 that's... 8 Q. Did Commonwealth maintain records of 9 audits it conducted of title agents? 10 A. I imagine they -- have I seen them, no, 11 but I imagine that they would keep agent audit 12 records. 13 Q. What did the audits consist of? 14 A. I'm not sure when they were instituted 15 or when they ended year-wise, time-wise, but I think 16 they usually did what they called a substantive audit 17 where they might pull a few files and just look at 18 them for underwriting, I guess, and then I believe 19 later -- I'm not sure at this time but -- I'm not 20 sure when that was instituted, but I think they had 21 some actual financial auditors to look at the 22 accounting. 23 Q. Of the agency? 24 A. Yeah. 25 Q. What was involved with looking at the</p>	<p style="text-align: right;">Page 65</p> <p>1 to be an overview of the relationship rather than 2 setting a specific quota. 3 Q. Does Commonwealth set quotas for agents 4 now? 5 A. I don't think it's fashioned in that 6 way, like a quota. 7 Q. Is there an expectation that an agent 8 remit so much money per month or year? 9 A. Well, I think they have streamlined some 10 of the agency operations, and probably one of the 11 bases for eliminating some were low remittances. 12 Q. I think that's -- is that what you had 13 testified earlier about the termination of Coastal 14 Title was for low remittances? 15 A. I said that was a possibility. I think 16 there was something in the termination letter and I 17 didn't recall what. I didn't think it was like 18 substantive for cause kind of -- it was either just 19 amicable or possibly for low remittance. I don't 20 know. I think they wrote for more than one company. 21 Q. Was there a bright-line rule in 22 Commonwealth about how much each title agent had to 23 remit? 24 A. I am not aware of one. 25 Q. So how would you determine that an agent</p>

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## D. SULLIVAN

<p style="text-align: right;">Page 66</p> <p>1 had low remittances?</p> <p>2 A. Well, I think you could still have an</p> <p>3 idea of what you're getting from different agents and</p> <p>4 whether it's worthwhile maintaining this relationship</p> <p>5 and servicing the forms and underwriting other</p> <p>6 information for you know what your return is. I just</p> <p>7 don't know if there was any set number.</p> <p>8 Q. And I think earlier when I asked who you</p> <p>9 had spoken to to prepare for the deposition you said</p> <p>10 you had contacted two people via e-mail in</p> <p>11 accounting.</p> <p>12 A. Correct.</p> <p>13 Q. And why did you contact those people?</p> <p>14 A. In your list of questions you had asked</p> <p>15 questions about the -- what the profits were for '96</p> <p>16 and '97.</p> <p>17 Q. Right.</p> <p>18 A. And you had asked I think maybe profits</p> <p>19 on the particular transactions. I'm paraphrasing. I</p> <p>20 would have to look at your subpoena for the actual</p> <p>21 wording. So I contacted someone who would -- gave me</p> <p>22 income statements for '96 and '97 for Commonwealth.</p> <p>23 Q. Did you speak to anybody who -- and I'm</p> <p>24 not sure what Commonwealth would call NPC now.</p> <p>25 A. No, I am not even sure if NPC even</p>	<p style="text-align: right;">Page 68</p> <p>1 letter.</p> <p>2 I'm trying to think of a few other</p> <p>3 things. But anyway there are some situations where</p> <p>4 we don't give the lender's counsel -- if the lender</p> <p>5 has its own counsel, we don't approve their own</p> <p>6 attorney or, you know, that's their own counsel,</p> <p>7 they're responsible for their own counsel's actions.</p> <p>8 So there's certain requirements, that they be a New</p> <p>9 Jersey attorney, more specifics, the type of</p> <p>10 transaction that we would issue.</p> <p>11 Q. Are these requirements listed anywhere?</p> <p>12 A. Again, I haven't found a memo for the</p> <p>13 time frame that you're talking about. In speaking --</p> <p>14 I think Gary Hamm may have given me a later Lawyer's</p> <p>15 Title memo, which he thought at that time</p> <p>16 Commonwealth and Lawyers were part of the same</p> <p>17 family. So there may have been a similar memo for</p> <p>18 Commonwealth. So, again, that's a guess, but it gave</p> <p>19 me some of the parameters or refreshed my memory from</p> <p>20 long ago, and we knew there were certain rules for</p> <p>21 issuing those letters.</p> <p>22 Q. And Commonwealth still has that memo you</p> <p>23 said?</p> <p>24 A. Lawyer's Title.</p> <p>25 Q. Lawyer's Title. Okay. That's the</p>
<p style="text-align: right;">Page 67</p> <p>1 exists. I'm not sure if that was kept when we bought</p> <p>2 them.</p> <p>3 Q. Okay. What does that stand for?</p> <p>4 A. I believe it's National Processing</p> <p>5 Center.</p> <p>6 (A discussion takes place off the</p> <p>7 record).</p> <p>8 Q. And earlier you said there were</p> <p>9 parameters -- sorry I'm jumping around a bit -- with</p> <p>10 closing protection letters? I think I had asked the</p> <p>11 question of who orders the closing protection letter</p> <p>12 and you had said: Well, the lenders require it, but</p> <p>13 you said there are -- I believe you said there were</p> <p>14 parameters.</p> <p>15 A. Yeah. Again, I don't know the time and</p> <p>16 I haven't memorized every factor. I think there was</p> <p>17 a later memo, which actually wasn't from Commonwealth</p> <p>18 but related companies, that outlined some, but there</p> <p>19 are certain things, like, it's supposed to be for a</p> <p>20 single transaction. We don't issue blanket letters</p> <p>21 for an attorney to close anything. You know, it has</p> <p>22 to be a specific transaction. Has to be to a lender</p> <p>23 who has received a commitment. We don't issue them</p> <p>24 to usually non-institutional lenders, like a seller</p> <p>25 take-back, we don't give the seller a closing service</p>	<p style="text-align: right;">Page 69</p> <p>1 documents that are on loan?</p> <p>2 A. That memo, I just got a copy of that</p> <p>3 memo from Gary Hamm in New Jersey.</p> <p>4 Q. Okay. So you have that memo now?</p> <p>5 A. I have that memo.</p> <p>6 Q. Who then would order the closing</p> <p>7 protection letter?</p> <p>8 A. Well, the attorney requesting insurance</p> <p>9 under the usual scenario requested a commitment, and</p> <p>10 an institutional lender will usually require a</p> <p>11 closing service letter. So I think that the agency</p> <p>12 probably prepared them with the commitment and issued</p> <p>13 them together. An attorney may have requested it,</p> <p>14 but I think it was something that an institutional</p> <p>15 lender would require.</p> <p>16 Q. Who paid for the closing protection</p> <p>17 letter?</p> <p>18 A. Well, it was part of the invoice given</p> <p>19 and paid by the purchaser, I guess, or if it was a</p> <p>20 refi, it would be the borrower.</p> <p>21 Q. And that's why I guess as I've gone</p> <p>22 through files there are checks from the closing</p> <p>23 attorneys, either Stanley Yacker or Anthony Cicalese,</p> <p>24 to Coastal Title Agency because the premiums were</p> <p>25 actually paid from the transaction to the title</p>

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<p>1 agency?</p> <p>2 A. Correct.</p> <p>3 Q. And then the title agency would remit</p> <p>4 the premiums?</p> <p>5 A. A portion.</p> <p>6 Q. A portion?</p> <p>7 A. Our split, and maybe for the closing</p> <p>8 service letter that \$25 fee came to us.</p> <p>9 Q. That' what my next question was going to</p> <p>10 be. Did the title agent ever retain any portion of</p> <p>11 the \$25 fee for the closing protection letter?</p> <p>12 A. I believe I read something that they</p> <p>13 were not supposed to keep. The agent was not to keep</p> <p>14 the 25. That that was a basically for risk and that</p> <p>15 was supposed to be fully remitted to the company.</p> <p>16 Q. Is the closing protection letter then a</p> <p>17 separate type of insurance?</p> <p>18 MR. MCGOWAN: What was that again?</p> <p>19 Q. Is the closing protection letter a</p> <p>20 separate type of insurance?</p> <p>21 A. It's kind --</p> <p>22 Q. I don't know if that's the right</p> <p>23 terminology.</p> <p>24 A. I don't know what "separate" is either.</p> <p>25 I mean, it's issued in conjunction with the</p>	<p>1 know if Commonwealth ever made a decision not to</p> <p>2 provide either title insurance or a closing</p> <p>3 protection letter on any of the loans that Walsh</p> <p>4 Securities has at issue in the lawsuit?</p> <p>5 MR. KOTT: Object to the form. I have</p> <p>6 no idea what you're asking. I don't know whether</p> <p>7 that was a valid objection. I don't understand your</p> <p>8 question.</p> <p>9 Q. The question -- do you understand the</p> <p>10 question, Miss Sullivan?</p> <p>11 A. I think you're asking a question about</p> <p>12 all the transactions that had already closed and for</p> <p>13 which you already made claims on the letters. Right?</p> <p>14 Q. Correct. My question was: In reviewing</p> <p>15 the documents at Commonwealth, did you ever come upon</p> <p>16 an -- I'm not sure that you would even see this, but</p> <p>17 a loan that Walsh had funded in which Commonwealth</p> <p>18 had decided or Coastal Title had not agreed to</p> <p>19 provide either title insurance or a closing</p> <p>20 protection letter?</p> <p>21 MR. KOTT: Objection to the form.</p> <p>22 A. I guess I'm trying to understand it. So</p> <p>23 you're saying did we --</p> <p>24 Q. Ever decline --</p> <p>25 A. -- object to issuing a letter and that</p>
Page 71	Page 73
<p>1 commitment. There's a requirement that it be issued</p> <p>2 where there's a commitment issued. It can't be</p> <p>3 issued independently without a commitment. So it has</p> <p>4 some relationship and tie to the commitment. There</p> <p>5 is a separate charge for it. It does have separate</p> <p>6 coverages that wouldn't be found under the</p> <p>7 commitment.</p> <p>8 Q. Okay. Just off the record.</p> <p>9 (A discussion takes place off the</p> <p>10 record).</p> <p>11 Q. You had also said earlier that the</p> <p>12 closing protection letter is -- was a standard</p> <p>13 state-approved form. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. Was there any difference in the language</p> <p>16 used by -- for closing protection letters for</p> <p>17 subprime mortgages as compared to a conventional</p> <p>18 mortgage?</p> <p>19 A. There's only one form of letter at a</p> <p>20 given time for any loan transaction.</p> <p>21 Q. So there wasn't any difference whether</p> <p>22 it was subprime or jumbo or conventional?</p> <p>23 A. No.</p> <p>24 Q. Earlier you said you had reviewed</p> <p>25 different files preparing for the deposition. Do you</p>	<p>1 they -- somebody issued the letter anyway and thereby</p> <p>2 giving rise to your claim?</p> <p>3 Q. No. What I was asking was actually in a</p> <p>4 broader context was: In preparing for the deposition</p> <p>5 did you ever find any documents, letters that</p> <p>6 Commonwealth declined to issue a title insurance</p> <p>7 policy, commitment or a closing protection letter?</p> <p>8 MR. KOTT: Object to the form.</p> <p>9 Q. To any of these -- again, I only care</p> <p>10 about the loans that were underwritten by Walsh</p> <p>11 Securities.</p> <p>12 A. I don't recall seeing any, no.</p> <p>13 Q. Okay. And then presumably the</p> <p>14 information you obtained in your investigation or</p> <p>15 through the litigation -- and by the information I'll</p> <p>16 focus in on the loan files, did you review the loan</p> <p>17 files from Walsh Securities?</p> <p>18 A. Did I for the purpose of this?</p> <p>19 Q. Deposition.</p> <p>20 A. No.</p> <p>21 Q. Did you review the agency files that</p> <p>22 Commonwealth had received from Coastal Title for this</p> <p>23 deposition?</p> <p>24 A. I glanced at a couple of them that were</p> <p>25 attached to the files that I may have either done</p>

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<p style="text-align: right;">Page 74</p> <p>1 something with -- unrecorded documents or I pulled a 2 couple and just glanced at them for one reason or 3 another. 4 Q. Do you remember what the property 5 addresses were? 6 A. No. 7 Q. How many files? Maybe how many files 8 did you glance at? 9 A. Maybe five. 10 Q. Do you recall if those files had closing 11 protection letters in them? 12 A. In the Coastal file? I think they did 13 but I can't say all of them and I -- I believe there 14 were letters in some. 15 Q. Where else would Commonwealth get the 16 closing protection letters in a case of a litigation 17 like that which Walsh has filed, because I think you 18 had said earlier you guys -- by "you guys" I mean New 19 Jersey sense, Commonwealth didn't receive the title 20 insurance, the commitments or the closing protection 21 letters, you just received a portion of the premiums 22 that were remitted? 23 A. I know some of the policies may have 24 been sent to NPC. I don't know if any closing 25 service letters were -- that's something I don't know</p>	<p style="text-align: right;">Page 76</p> <p>1 letter? 2 A. The policy? Well, the policy has the 3 named covered risks, you know, and provides certain 4 protections and the -- I am not going to say closing 5 service letter because that's the term for the new 6 form. The closing service letter provides certain 7 protections for functions that the closing attorney 8 performs so the coverages are different. 9 Q. Is the closing protection letter 10 considered by Commonwealth a subset of the title 11 insurance policy or it's different, it covers 12 different risks? Is what I'm understanding you to 13 say? 14 A. Yes. 15 Q. So are there different -- I don't know 16 how you would say it -- policies? 17 A. Well, I think they could overlap because 18 the policy could, you know, insure priority of the 19 lien on the mortgage and the closing protection 20 letter is covering that function also, but the 21 closing service letter is issued while the commitment 22 is issued and sometimes the policy has not been 23 issued. Maybe certain requirements for a policy set 24 forth on Schedule B-1 haven't been met yet or 25 whatever. So the commitment -- if, for instance, you</p>
<p style="text-align: right;">Page 75</p> <p>1 the answer to. They would not have been sent to 2 somebody in the New Jersey agency department. 3 Q. So Commonwealth would have had to get 4 the letters from outside of itself? 5 A. Yeah, I am just not sure -- I'm not sure 6 whether that is a function that NPC performs or not. 7 That would be something I would have to ask. 8 Q. Well, that was going to be my next 9 question. Who would you ask to determine that? 10 A. Well, I guess I would find out if NPC 11 still exists and, you know, I might have to ask 12 around. 13 Q. Well, I guess you wouldn't know until 14 you determine if NPC exists. 15 A. I don't know. You know, either somebody 16 who was involved in closing of the -- not even claim 17 centers. I could probably ask Gary Hamm actually to 18 see if that's still the practice of the agents to 19 send stuff -- policies to NPC. Are they still there? 20 Do they collect? 21 Q. Actually I would ask if you could do 22 that. 23 A. Okay. 24 Q. Miss Sullivan, how does the title 25 insurance policy relate to the closing protection</p>	<p style="text-align: right;">Page 77</p> <p>1 didn't record the mortgage, you haven't met a 2 requirement for the commitment, you're not entitled 3 to a policy until the commitments are met. Then you 4 look to the closing service letter and see if that 5 provided the coverage for the closing attorney to 6 establish the first lien. 7 Q. And that actually was going to be my 8 next series of questions. How does the closing 9 protection letter, which is I guess now properly the 10 closing service letter, back then it was -- was it 11 the closing protection letter? 12 A. I think pre-94 it was closing protection 13 letter. Post-94, the new form, closing service 14 letter. 15 Q. The -- how does the closing service 16 letter relate to the title commitment? 17 A. Well, those are -- I think what I was 18 trying to do by example saying that the commitment 19 has certain requirements and if they're not met, then 20 we don't have to issue a policy and insuring, you 21 know, that your first lien when you haven't recorded 22 your documents. But for the lender or certain 23 instances I guess the purchaser gets protection under 24 the letter, you know, we've covered the function of 25 that attorney for the purpose of establishing the</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 lien priority, and if they haven't done that -- the  2 commitment terms had not been met but the claim is  3 really under the provision of the closing service  4 letter.  5 Q. So if an attorney doesn't record the  6 note, the mortgage, the deed, you would proceed with  7 a claim under the closing service letter?  8 MR. HAYES: Object to the form. Again,  9 you're still talking about recording the note which  10 doesn't happen.  11 Q. Say they don't record the deed or the  12 mortgage, the claim is then under the closing  13 protection letter?  14 A. Yes.  15 Q. And in your example, because the  16 documents haven't been recorded, the title insurance  17 policy should not issue?  18 A. The terms of the commitment -- the  19 requirements of the commitment haven't been  20 satisfied. The commitment will require the recording  21 of the documents to establish the insured.  22 Q. And how does Commonwealth know that the  23 requirements have been met to issue the title  24 insurance policy?  25 MR. HAYES: Let me object to the form</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And who then gets or who then would  2 receive a copy of the title insurance policy?  3 A. I think the agent would probably send  4 the policy to the attorney who had requested the  5 insurance. Maybe sometimes the attorney may direct  6 him to send a lender's policy to them directly or  7 depending on how long it transpired between the  8 closing the policy, sometimes the lender would call  9 the agent directly. They may ask for the policy, but  10 I think in the normal course it would go back to the  11 attorney that had requested the insurance for  12 distribution to his client, the lender.  13 Q. So when the lender received the policy  14 they would know that the conditions had been met,  15 that's why the policy was issued?  16 A. I guess they would feel comfort that  17 they had the insurance that they had requested. So  18 they would, I guess, assume that everything was --  19 taken care of as far as exceptions and recording and  20 that we've removed whatever exceptions that they  21 expected would be removed, you know, following their  22 instructions, the lien satisfied, prior mortgages.  23 Q. Okay. You said that Commonwealth  24 received a percent of the remittance I think were  25 your words. How was that or what was that</p>
<p style="text-align: right;">Page 79</p> <p>1 again because Commonwealth is not issuing the policy.  2 MR. KOTT: Same objection.  3 Q. So the policy is issued by the -- in  4 this case Coastal Title Agency. How does the  5 Commonwealth agent know that the conditions have been  6 met so it would issue the title insurance policy?  7 A. Well, there are probably more than one  8 requirement set forth on that, but if we're talking  9 specifically for recording documents, usually the  10 attorney would let them know that the deal is closed  11 in some fashion by either remitting the premium,  12 providing affidavits or other things that may be  13 required, and then they should be doing a search of  14 the county records to pick up the recording  15 information for the new documents.  16 Q. By "they" you mean the title agent?  17 A. Yes.  18 Q. And so once they've done the search to  19 pick up that the documents have been filed, then they  20 would issue the title insurance policy?  21 A. Doing -- if all the other requirements  22 have been met, they would do that. The policy would  23 reflect the date of recording and the recording  24 information for the deed, if there's a deed, and for  25 the mortgage.</p>	<p style="text-align: right;">Page 81</p> <p>1 percentage?  2 A. My recollection was it was 80/20. We,  3 Commonwealth, received a 20 percent split. I know  4 the agency agreement will -- or if there was an  5 endorsement that would tell you that, but I believe  6 it was 80/20. I don't know if it was altered later.  7 Q. Why did Commonwealth as the insurance  8 company only receive 20 percent since I would assume  9 the ultimate risk lay with them?  10 MR. HAYES: How much time do you have?  11 MR. McGOWAN: That's the million dollar  12 question. Off the record.  13 (A discussion takes place off the  14 record).  15 Q. Actually, Miss Sullivan, if we can go  16 back. Earlier you said -- I believe you testified  17 earlier that sometime after -- in 1998 you had  18 received correspondence from Stern Lavinthal and  19 Commonwealth had retained attorneys to deal with  20 unfiled documents. Who were the attorneys or  21 attorney retained by Commonwealth to handle those?  22 A. David Golub at Williams, Cleary, Miller  23 &amp; Otley, I think it was the firm name at the time.  24 Q. Does Commonwealth still use Mr. Golub?  25 A. The company now employs Mr. Golub. Not</p>

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<p style="text-align: right;">Page 82</p> <p>1 Commonwealth per se but I guess he's an officer of 2 Commonwealth too.</p> <p>3 Q. Going back to our discussion about what 4 I'm calling approved attorneys, which you say isn't 5 the term anymore, but did Commonwealth provide 6 guidelines to the attorney in conjunction with the 7 issuance of a closing protection letter?</p> <p>8 A. Did they provide guidelines to the 9 attorney to close the deal?</p> <p>10 Q. Right. Mostly I guess, as you said, the 11 closing protection letter was issued to protect the 12 lender, and you had said earlier that Commonwealth 13 had underwriting memoranda that it produced. Did any 14 of the underwriting memoranda, was any of it sent to 15 the closing attorneys to --</p> <p>16 A. No.</p> <p>17 Q. So all the underwriting memoranda 18 produced by Commonwealth went to its agents?</p> <p>19 A. Agents.</p> <p>20 Q. Did Commonwealth have any correspondence 21 with the closing attorneys?</p> <p>22 A. Not to my knowledge.</p> <p>23 Q. You said that at some point you, 24 Commonwealth, had a list of, I think you called it, 25 unapproved attorneys. Is Stanley Yacker -- or I</p>	<p style="text-align: right;">Page 84</p> <p>1 impossible. I mean, if you have been disbarred 2 you're not coming off. If you just had a very -- if 3 you were very uncooperative with the claims 4 department but turned around somehow -- I mean, it 5 would depend on the facts of that. It's probably 6 unlikely, but I would say it's not impossible. I 7 believe I've seen somebody come off, one or two.</p> <p>8 Q. So without having looked at the list, 9 can you tell me whether -- and I will just list 10 them -- Stanley Yacker, Anthony Cicalese, Richard 11 Pepsny or Mike Alfieri is disapproved?</p> <p>12 A. Without looking at the list I can't tell 13 you that, but if any of them were disbarred they're 14 probably on it.</p> <p>15 Q. So I think -- do you know if people who 16 turn their law license in would be -- or I don't even 17 know if that's a technical term.</p> <p>18 A. They have to be in the Lawyer's Diary to 19 be considered as an attorney. So if they have turned 20 in their law license they're probably not in the 21 Lawyer's Diary. So they probably come off that way, 22 not so much added on the unapproved list, but if they 23 weren't in the Lawyer's Diary they wouldn't be a New 24 Jersey attorney that they should be issuing a letter 25 for.</p>
<p style="text-align: right;">Page 83</p> <p>1 guess let me ask that question first. Is Mr. Yacker 2 an unapproved attorney?</p> <p>3 A. You know, I almost checked on one of our 4 lists but I didn't check.</p> <p>5 Q. Okay. So do you know if Commonwealth 6 ever made a decision to -- I don't know how you -- 7 what term -- what would you do to -- what process 8 would Commonwealth follow to decide that an attorney 9 was no longer approved? Let me ask it that way.</p> <p>10 A. Well, you know, as I said, they review 11 the Law Journal each week, they look for disbarred or 12 suspended attorneys to add to the list. I think if 13 we had a negative claims history or lack of 14 cooperation, we might choose not to do business with 15 an attorney and add them. I don't know specifically 16 whether these names were added. I know -- yeah, I 17 don't know -- I don't think I've seen anything to 18 that effect. I mean, I would have to look at a list 19 to see. I don't know if I would have a list from 20 back then.</p> <p>21 Q. Well, that was going to be my next 22 question. Do you know if the list is cumulative?</p> <p>23 A. I believe it's cumulative.</p> <p>24 Q. So once you're on you don't get off?</p> <p>25 A. Well, you know, I don't know that it's</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Does Commonwealth still have an approved 2 list from the 1997 time frame or disapproved list, 3 I'm sorry?</p> <p>4 A. I don't know. I know the person that 5 maintained it is no longer with the company, but 6 whether those records are still in Parsippany I don't 7 know.</p> <p>8 Q. Okay. You could look at the current 9 list though to see if someone --</p> <p>10 A. I could ask for the current list. I 11 don't know if they have combined lists now for all 12 brands because I probably have the one issued by 13 Chicago and it may be for all brands so...</p> <p>14 Q. I would -- we will add that to our 15 letter.</p> <p>16 Which function does the attorney 17 representing the purchaser in a real estate closing 18 perform for Commonwealth?</p> <p>19 MR. HAYES: Object to the form.</p> <p>20 A. For Commonwealth? I don't know that 21 they're performing per se for Commonwealth. Are you 22 saying what functions are they performing that we may 23 have liability for under --</p> <p>24 Q. We can start with that, yeah.</p> <p>25 MR. HAYES: Are you saying an attorney</p>

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<p style="text-align: right;">Page 86</p> <p>1 for the buyer who is also a closing attorney for whom 2 a letter has been issued? 3 MR. MAGNANINI: Yes. 4 A. Okay. And the letter is issued to cover 5 a lender, so, you know, what you're supposed to be 6 doing, I guess, is complying with the lender's 7 instructions to the extent that they fall within the 8 approved -- I'm looking for a word. Paragraph one of 9 the letter, they have to establish the lien priority 10 of the mortgage, I guess the validity, so, you know, 11 you look to have -- they have to obtain the documents 12 to establish the validity and the priority of the 13 mortgage. I guess there's a second section that I 14 guess if there are funds that are supposed to come 15 back to the lender, I guess for whatever reason, 16 funds are supposed to come back to the lender, I 17 guess there's certain coverage for that. And 18 paragraph two, I think the fraud or misapplication of 19 the funds to the extent that they affect those 20 matters listed in paragraph one, which is the 21 validity and priority of the lien of the mortgage. 22 So they're very limited functions that we believe 23 that we have liability for. 24 Q. So those -- are there any other -- let 25 me ask that -- functions that Commonwealth has</p>	<p style="text-align: right;">Page 88</p> <p>1 because obviously each claim is going to have 2 different issues and what you're looking for would -- 3 may be different. 4 Obviously it says you get back to the 5 insured for things that you think you need that will 6 assist you in making a decision on coverage or 7 otherwise address it. Even if you think it's covered 8 you may need additional information from parties. 9 The claims are so diverse you don't have a strict 10 checklist. 11 Q. Overall for all investigations? 12 A. Right. 13 Q. And then does the investigation -- 14 Commonwealth's investigation cease upon the filing of 15 a lawsuit or does it continue? I don't think I had 16 asked you that before. 17 A. Well, I am assuming we may still do some 18 review of things that we have in our possession, but 19 we have retained counsel. So counsel is kind of then 20 spearheading where we go with the case and getting 21 certain information. That's probably limited to what 22 we can get through discovery. Whether we're doing an 23 ongoing review of what is already in our possession, 24 you know, reviewing agent files or loan files, that 25 may be going on but...</p>
<p style="text-align: right;">Page 87</p> <p>1 liability for based on the actions of the closing 2 attorney? 3 MR. KOTT: Object to the form. 4 A. I mean, I think it has to fall within 5 the -- those covered actions on the letter. So I 6 guess I would have to see or hear a function and see 7 whether it fits. If they didn't pay off a prior 8 mortgage, then they haven't established the lien 9 priority of the mortgage. Right? 10 Q. Or the earlier example, they didn't 11 record the documents? 12 A. Right. 13 Q. I just have a few more general questions 14 on what is the kind of standard protocol for 15 investigating a claim at Commonwealth. Again, sorry, 16 back in '96, '97, trying to respect Mr. Kott's 13 17 pages of objections to the deposition notice. 18 A. I haven't discovered any real -- if 19 you're looking for an itemized list, I haven't found 20 that. The claims manual, in fact, says that every 21 investigation is going to differ based on the facts 22 and the nature of the claim. They gave or suggested 23 things that you may want to look for. Look at the 24 agent's file, you know, look at a survey or map 25 relevant to this so -- but it was very general</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Does Commonwealth at the conclusion of 2 its investigation, whether it -- because there's a 3 lawsuit or it's done, does it produce a final report 4 or some sort of decision -- I am not sure again -- 5 A. For internal purposes you mean? 6 Q. For internal purposes. I'm not sure 7 what your terminology would be. 8 A. I'm trying to remember whether that 9 Commonwealth manual had a form or something and I 10 don't recall specifically. I mean, you know, what we 11 try to do today in the claims system, we call it a 12 closed claim brief. It's not going to be greatly 13 detailed but may give a little information on the 14 closing of the file. It's not something -- I mean, 15 it's an internal suggestion. I don't know that -- 16 it's not like a file couldn't be closed without it. 17 Q. What happens to those closing documents, 18 closed claim brief, if one was produced? 19 A. Well, it's in the claim system. So as 20 far as I know the claims that are in the system 21 remain on the system, but again these procedures are 22 evolving as they become more computer oriented and 23 years ago you probably wouldn't have that same 24 procedure for entering everything in the computer 25 system.</p>

23 (Pages 86 to 89)

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1 Q. Okay. Do you know: Were any of the  
2 records from 1996 or 1997 ever computerized by  
3 Commonwealth?

4 A. The financial data is on the system, you  
5 know, payment fees and things like that are  
6 reflected. I don't know that we really have -- I  
7 would have to look, but I don't know that there's any  
8 real entries as far as status updates, that type of  
9 thing for -- I think when Commonwealth -- if  
10 Commonwealth had a claim system I'm not sure if it's  
11 functioning any longer. I'm speaking of what's been  
12 integrated into the Fidelity system so I'm not sure.  
13 And this -- being that most of what happened on this  
14 file was years ago, I'm not sure that anything could  
15 be on their system to put into ours.

16 Q. The transfer --

17 A. So -- I'm not sure that there's that  
18 much on this. I don't recall seeing what we call  
19 briefs.

20 Q. Okay. Who would you ask to find out if  
21 any of that old Commonwealth information was migrated  
22 or could have been migrated?

23 A. Who would I? Ask probably start with  
24 Matt Rini because he knows a lot about our system.

25 Q. All right. We will put that down as

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1 another follow up.

2 A. If you're asking me, I have access to  
3 the new system to look it up. I could look up the  
4 claim myself and -- because I did go in and look at  
5 the financial data to see whether we had ever paid  
6 Walsh because you were asking if we paid claims to  
7 anybody.

8 Q. Right.

9 A. But I don't know if I went into the  
10 brief section or not. I don't recall seeing briefs  
11 but I don't know.

12 Q. Okay.

13 A. But that's something I could look  
14 myself.

15 Q. Okay.

16 A. If it was unmigrated data, then Matt  
17 might know that.

18 Q. I will ask you, since you mentioned it,  
19 let me just -- I don't know how detailed you're going  
20 to be. How much -- we will flip to the financial  
21 stuff since you remember. How much did Commonwealth  
22 collect in fees, or premium is what you would call  
23 it, in 1996 and 1997 from Coastal Title Agency?

24 A. Unfortunately I didn't get an answer to  
25 that question. For one thing I don't have a list of

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1 the policies. I need a list of policies issued to  
2 Commonwealth to see if there were remittances on the  
3 policies, and everything I was looking at had  
4 commitment numbers. There's no tracking by  
5 commitments, and I don't think an agent usually  
6 remits until the policy is issued. So I guess to the  
7 extent -- or on the files where no policy was issued  
8 there probably is no remittance data available. If  
9 there are policies, then I have to identify policy  
10 numbers and then try again.

11 Q. Okay. And where would you get the  
12 policy numbers from?

13 A. Either the files or maybe somebody has a  
14 chart or something. I don't know if anybody has made  
15 a list of policies. Everything I see says -- has  
16 Coastal Title file numbers on it.

17 MR. HAYES: Are you asking her -- I  
18 think Donna is answering your question as though you  
19 were asking her on the transactions which are the  
20 subject of this lawsuit.

21 A. That's what you're asking. Right?

22 MR. HAYES: I got the impression you  
23 were asking overall.

24 Q. Yeah, my mistake. I'm going to ask you  
25 what you're answering now, and so what I wanted to do

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1 was, as all trained lawyers are, to ask the general  
2 question first. Do you know -- let me just ask: How  
3 much premium did Commonwealth collect from Coastal  
4 Title agency in 1996 and 1997?

5 A. I don't have that. I thought you meant  
6 for the whole company. In your --

7 Q. Let me ask that question then. How many  
8 premium did Commonwealth Land Title Insurance Company  
9 collect in 1996 and 1997?

10 A. I keep saying I don't have that  
11 information because I think we're talking apples and  
12 oranges a little bit here. I went and got income  
13 statements is what the home office provided me with,  
14 which shows operating income, less expenses, and then  
15 it has other investment income and some other things.  
16 I am not great at reading all this financial stuff  
17 but -- so I didn't know if you were looking for  
18 operating income because I think you said profits and  
19 profits are not premium. Premium is less -- there's  
20 an expense to run the agency, department and  
21 everything, and now that I think of it I'm not sure  
22 that that doesn't reflect direct operation income too  
23 because that I think is -- the whole company's income  
24 for the operating income less expenses. So I'm not  
25 sure if that has relevance to what you're looking

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 for.</p> <p>2 Q. So you got financial documents from the</p> <p>3 1996, '97 time frame for --</p> <p>4 A. For Commonwealth filed I think in</p> <p>5 Pennsylvania, I think, maybe because that's where the</p> <p>6 home office was.</p> <p>7 Q. And what was Commonwealth's operating</p> <p>8 income in 1996?</p> <p>9 MR. KOTT: Hold on. Since that deals</p> <p>10 with financial information I think I can ask you what</p> <p>11 issue that goes to that's in the case?</p> <p>12 MR. MAGNANINI: Well, we've asked about</p> <p>13 profitability.</p> <p>14 MR. KOTT: I know. That's my question.</p> <p>15 What does profitability have to do with any issue in</p> <p>16 the case?</p> <p>17 MR. MAGNANINI: We would like to know</p> <p>18 how much Commonwealth made.</p> <p>19 MR. KOTT: I know that's what you want</p> <p>20 to know, but how is that relevant or could lead to</p> <p>21 the discovery of relevant information given the</p> <p>22 complaint in the case? And the only reason -- I</p> <p>23 normally don't discuss relevancy objections because I</p> <p>24 am aware of the federal rules except if you're</p> <p>25 getting into things like financial information which</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. MAGNANINI: I understand that,</p> <p>2 David, although I also -- we've got a bad-faith</p> <p>3 claim. Right? So that would open you to punitive</p> <p>4 damages if we prevail. Right? And the profitability</p> <p>5 of the company --</p> <p>6 MR. KOTT: I wouldn't think so. I</p> <p>7 wouldn't think that a bad-faith claim would expose us</p> <p>8 to punitive damages.</p> <p>9 MR. MAGNANINI: Maybe just to the actual</p> <p>10 loss.</p> <p>11 MR. KOTT: Ask the question again. As I</p> <p>12 said I am not going to get in the way if you want to</p> <p>13 ask her what Coastal remitted or things of that</p> <p>14 nature. What I'll call case-specific stuff.</p> <p>15 Q. I guess, Miss Sullivan, going back to</p> <p>16 having reviewed the documents that were provided by</p> <p>17 the home office, you said -- what can you tell me</p> <p>18 about Commonwealth's operating income in 1996 and</p> <p>19 1997?</p> <p>20 A. The only numbers I tried to memorize</p> <p>21 were operating income less operating expense, and I</p> <p>22 believe in '96 it was around 20 million and then in</p> <p>23 '97 it was like 21.7 million. There were other</p> <p>24 operating -- or, I'm sorry, investment income and</p> <p>25 other income sections, which I'm not sure what they</p>
<p style="text-align: right;">Page 95</p> <p>1 gets into personal and propriety stuff, that's why I</p> <p>2 was asking.</p> <p>3 MR. MAGNANINI: What I'm asking for is</p> <p>4 because I'm going to -- we're going to raise with</p> <p>5 Coastal obviously how much money they made from</p> <p>6 issuing title --</p> <p>7 MR. KOTT: That's a different question</p> <p>8 than the profitability of Commonwealth.</p> <p>9 MR. MAGNANINI: I am asking about</p> <p>10 profitability because that's what Miss Sullivan</p> <p>11 started talking about.</p> <p>12 MR. KOTT: She did, but now -- I don't</p> <p>13 think --</p> <p>14 A. Is that not the question?</p> <p>15 MR. MAGNANINI: I think I could ask how</p> <p>16 profitable -- or I have yet to get any sort of answer</p> <p>17 so I don't know. Let me get an answer to a question</p> <p>18 and then I'll figure out if there's relevance to</p> <p>19 profitability and then --</p> <p>20 MR. KOTT: I didn't say anything -- if</p> <p>21 you want to ask her how much Coastal remitted, that's</p> <p>22 fine, but you're asking a question about the</p> <p>23 profitability of the corporate defendant which raises</p> <p>24 all sorts of other issues as far as discoverability</p> <p>25 and things of that nature.</p>	<p style="text-align: right;">Page 97</p> <p>1 represent. I don't think they go to what your --</p> <p>2 Q. No, I am not concerned about that.</p> <p>3 A. You're looking for. So that's the</p> <p>4 extent. I just obtained copies of those two</p> <p>5 documents.</p> <p>6 Q. And then when you say minus operating</p> <p>7 expenses, were those operating expenses -- did they</p> <p>8 include payments to the title agents?</p> <p>9 A. I don't have any --</p> <p>10 MR. McGOWAN: Commissions you mean?</p> <p>11 Q. Commissions.</p> <p>12 MR. HAYES: I will object to the form</p> <p>13 because they're not commissions. They're not paid to</p> <p>14 the agent. The income is a net to Commonwealth.</p> <p>15 A. The premium is the income. Our split is</p> <p>16 the income. The agent retains their portion so</p> <p>17 that's not income I guess to us.</p> <p>18 Q. That's actually in a kind of roundabout</p> <p>19 way what I was trying to get to. The income or the</p> <p>20 details on the documents that you received, that is</p> <p>21 just income to Commonwealth, it's not --</p> <p>22 A. I don't think there's really much of a</p> <p>23 description of what that operating expense is.</p> <p>24 Q. Okay. And how much was the -- I'm not</p> <p>25 sure what term -- deduction of --</p>

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1 A. Operating expense?  
 2 Q. Of operating expense. Excuse me. How  
 3 much was the operating expense?  
 4 A. I didn't memorize all these numbers.  
 5 I'm sorry.  
 6 Q. I don't mean to put you through a memory  
 7 test.  
 8 A. I'm imagining -- I could guess what one  
 9 was but I don't know for sure. I just got the total  
 10 profit.  
 11 Q. So the total was the 20 million?  
 12 A. What I characterize as profits.  
 13 Q. Was the 20 million in 1996 and 21.7 --  
 14 21,700,000 in 1997. Okay. Now, how much of that had  
 15 been remitted by Coastal Title Agency?  
 16 A. I haven't been able to identify the  
 17 remittances from Coastal and that's a national, like,  
 18 number. That's a big number that encompasses, you  
 19 know, all states and everything, so the  
 20 relationship -- proportion it might be, I would have  
 21 to calculate.  
 22 Q. I will ask the question anyway. How  
 23 much of those -- the 20 million and the 21.7 million  
 24 was remitted by Coastal Title Agency on behalf of  
 25 loans funded by Walsh Securities at issue in this

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1 case?  
 2 A. I don't know. Without policies I  
 3 can't -- without the numbers of the policies, the  
 4 identification of the policies, I can't identify what  
 5 was remitted on those particular files.  
 6 Q. How was the money remitted by Coastal  
 7 Title Agency to Commonwealth?  
 8 MR. KOTT: You mean check, wire, cash?  
 9 Q. Exactly. What method did Commonwealth  
 10 receive payment from Coastal?  
 11 A. I don't know.  
 12 Q. Okay. I am only asking because in the  
 13 files we have checks from --  
 14 A. Do you?  
 15 Q. -- the closing attorneys to Coastal  
 16 Title Agency for an amount of premium and \$25 for the  
 17 letter but you didn't -- and they have --  
 18 A. Those are made to Coastal.  
 19 Q. Those are made to Coastal with the  
 20 property address and things on it. You didn't get  
 21 it? That's what the question is.  
 22 A. They didn't endorse it over.  
 23 Q. And then you didn't get an -- or at  
 24 least you haven't found a check saying: Enclosed is  
 25 remittance for these transactions?

1 A. I didn't go through each of the files.  
 2 That would have taken me a lot of time. I wasn't  
 3 finding the policies in several of the files anyway.  
 4 Some of the files just had commitments but given more  
 5 time or I was -- I didn't know if anybody had  
 6 identified these transactions. The policies that  
 7 were -- if they had policy numbers associated with  
 8 them, charts or anything.  
 9 Q. My question was going to be: You said  
 10 you had received the agency -- back to Commonwealth.  
 11 You had received the agency files I thought you said.  
 12 A. Yeah.  
 13 Q. Did you get a chance to look in those  
 14 files to see if the copies of the remittance checks  
 15 from the closing attorney to the agent was in their  
 16 files?  
 17 A. From the closing attorney to the agent?  
 18 I didn't look for that.  
 19 Q. How many claims did Commonwealth pay  
 20 out -- again we will limit it to 1996, 1997 -- based  
 21 on the closing protection letters?  
 22 A. I don't know.  
 23 MR. HAYES: Is your question in this  
 24 case or nationwide?  
 25 Q. First actually I would limit it to New

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1 Jersey initially.  
 2 A. I don't know.  
 3 Q. And then --  
 4 A. I don't know if we break down those  
 5 types of numbers by categories.  
 6 Q. That was going to be my next question.  
 7 Is there any way for you to determine that?  
 8 A. I don't think there's anything in the  
 9 claims system that would identify this as a closing  
 10 service or closing protection letter claim.  
 11 Q. I will just ask the question. But did  
 12 Commonwealth make any payments on the loans at issue  
 13 in this case based on the closing protection letters  
 14 that it issued?  
 15 MR. KOTT: You mean payments to Walsh  
 16 Securities?  
 17 Q. To Walsh Securities.  
 18 A. No, not to my knowledge. I did not see  
 19 anything in the claims system.  
 20 Q. Do you know if Commonwealth made  
 21 payments to other -- any other entity besides Walsh  
 22 Securities based on --  
 23 A. I ran the other names that were listed  
 24 in the subpoena notice and did not find any payments  
 25 to any of those entities. I found some claim files

26 (Pages 98 to 101)

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1 but no payments made to any of the entities.  
 2 Q. Did Commonwealth issue closing  
 3 protection letters to Richard Pepsny in 1996 and 1997  
 4 for any of the loans at issue in this case?

5 A. I can't answer that. From what I've  
 6 seen I thought most were identified as either Stanley  
 7 Yacker or Cicalese, whatever his first name is.

8 Q. Anthony Cicalese.

9 A. Anthony Cicalese. I recognize the other  
 10 names but I don't know -- but something in my reading  
 11 indicates that maybe we didn't, but I can't state  
 12 that to a certainty.

13 Q. That's what my question is. In just  
 14 reviewing documents to prepare for this, did you see  
 15 any closing protection letters issued to any of the  
 16 other two attorneys?

17 A. Did I see them, no.

18 Q. Pepsny or Michael Alfieri?

19 A. No.

20 (A lunch recess takes place.)

21 DIRECT EXAMINATION BY MR. MEE:

22 Q. I am Daniel Mee. I work with Bob  
 23 Magnanini here at the firm and he's graciously let me  
 24 ask you a few questions.

25 A. Okay.

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1 Q. He might smack me around if I ask the  
 2 wrong questions but I'll probably jump around a  
 3 little bit before I get my thoughts honed in, but I  
 4 believe you testified earlier that you had looked at  
 5 some of the loan files before you came here today.

6 A. Not loan files. I don't have possession  
 7 of loan files. To my knowledge I haven't seen those  
 8 in any of the boxes that were delivered to us. I  
 9 have files on individual properties that we opened  
 10 with respect to the smaller claims of unrecorded  
 11 documents or tax issues and attached to some of them  
 12 I have copies of the agent's file, not the loan file.

13 Q. Okay.

14 A. They were produced to us at one time but  
 15 I believe they have been -- not in our possession.

16 Q. I'm going to show you a letter, and I  
 17 would just like to know if in the process of your  
 18 review if you looked at this letter, if you recognize  
 19 the letter?

20 A. This is the original claim letter, I  
 21 believe, from Walsh.

22 MR. MEE: Can we mark that.

23 (Commonwealth-3, Letter dated July 28,  
 24 1997, is received and marked for identification.)

25 Q. And how about this?

1 A. This is our response to the claim  
 2 letter.

3 MR. MEE: Can I mark this one too,  
 4 please.

5 (Commonwealth-4, Letter dated August 12,  
 6 1997, is received and marked for identification.)

7 Q. On the bottom of Exhibit 4, is that your  
 8 signature?

9 A. Yes.

10 Q. Do you remember writing that letter?

11 A. No.

12 Q. Fair enough. I am not going to put  
 13 this -- I am not going to put this in as an exhibit,  
 14 but did you have an opportunity to review the  
 15 documents produced by McCarter & English in this case  
 16 from Commonwealth?

17 A. I'm going to say no because I think that  
 18 encompasses a huge thing and I didn't do it in  
 19 preparation for this. Whether I ever saw them in the  
 20 past --

21 Q. Do you recognize this letter?

22 MR. KOTT: And the letter, for the  
 23 record, is a letter dated November 23, 2005 from Dave  
 24 Kott to Robert Magnanini.

25 MR. MAGNANINI: Enclosing documents.

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1 MR. KOTT: Enclosing certain documents.

2 A. Is the question: Do I remember seeing  
 3 this?

4 Q. Do you recognize that letter?

5 A. No.

6 Q. How about the documents that are behind  
 7 that letter?

8 A. I don't have a recollection of them.

9 Q. Okay. Let me just point out the first  
 10 page up here and the second page. This document is  
 11 labeled COM with a lot of zeros and then a nine at  
 12 the end. That policy number at the top, is that the  
 13 number that you would have to review in order to  
 14 determine whether or not a premium was sent to  
 15 Commonwealth on a policy?

16 A. Yes, I believe it would be.

17 Q. So you could cross-reference that number  
 18 with whatever you have in Commonwealth's electronic  
 19 system to determine whether or not a premium was sent  
 20 in?

21 A. The information that I'm getting is  
 22 through home office. What I would do is I could  
 23 provide them with a list of the policy numbers and  
 24 see if they have information that corresponds to  
 25 these policy numbers as this looks like a preprinted

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 policy number, so I'm assuming that's the right 2 number that they would be looking for. 3 Q. Thanks. Did Commonwealth request that 4 the files on these Walsh loans at issue here be sent 5 to Nancy Koch from the National Processing Center? 6 A. I don't know the answer to your 7 question. I know I don't know the answer to it. I 8 think your question is: Were the files -- did 9 Commonwealth request that NPC send files to Nancy 10 Koch? 11 Q. My understanding is that all of the 12 documents that came through Coastal went to 13 Commonwealth's National Processing Center. Is that 14 right? 15 A. Meaning their entire file? 16 Q. Any file on which there was a loan. No? 17 A. Sounds unlikely to me. I would have 18 thought that NPC only collected policy forms and 19 possibly the closing protection letter form, if they 20 were later assigned by number. I find it unlikely 21 that the whole file would have gone there. Again, I 22 can't state for a fact but that would surprise me. 23 Q. So of those documents that would have 24 gone to NPC, which you believe include the closing 25 service letter or the closing protection letter --</p>	<p style="text-align: right;">Page 108</p> <p>1 first point person to start an investigation? I'm 2 sorry, let me rephrase. 3 Would she have been the point person on 4 an investigation of the loans at issue in this case? 5 A. No. The claims department would have, 6 except they could have been running parallel since 7 Nancy was the agency manager and I see that she met 8 with Coastal from what I've read. I don't recall 9 whether she did that at the same time the claim first 10 came in or later. I'm not sure of the timing of 11 that, but once the claim came in claims would have 12 been in charge of it, but, you know, she may have 13 assisted in her role as the agency manager. 14 Q. And could you determine whether or not 15 the claims department received any information that 16 was with NPC regarding these files, these loans? 17 A. I could look through the boxes. I 18 didn't look for that or see that. I don't recall 19 seeing a group of policies. I didn't have policy 20 numbers to go to Jacksonville with. I mean, I could 21 look through there and see if I can find somewhere 22 where there's a grouping. 23 Q. I think we might make that part of our 24 request. 25 A. Okay.</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. KOTT: Objection. She just said she 2 wasn't sure if it included that. 3 A. The policy. I think they collected 4 copies of the policies and then they invoiced the 5 agent for their remittances, at least that's 6 something in the documents that I read in preparing 7 for this. 8 Q. Do you know whether the documents that 9 NPC collected were sent to Nancy Koch on the loans at 10 issue in this case? 11 A. I don't know that. 12 Q. Is there a way for you to find out? 13 A. Other than asking Nancy Koch if she 14 remembers? You know, I mean, I can look through the 15 claim file. I'm not sure why they would have been 16 going to Nancy instead of the claims department at 17 that point. If this is as the claim is progressing, 18 I would have thought that would have been something 19 the claims department was interested in more. You 20 know, I don't know. I could -- Nancy is not with the 21 company any longer. I could ask what she recalls. I 22 mean, I could make an inquiry. 23 Q. Who would you make the inquiry to? 24 A. Nancy Koch. 25 Q. Would she be the first person -- the</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Just to jump around a little bit, what 2 type of due diligence does Commonwealth perform in 3 determining whether or not to enter into an agency 4 agreement? 5 A. This is difficult again because I've not 6 been in that department, and I'm sure those standards 7 have changed over time. I believe in the agency file 8 there was a short one-page form and it said, you 9 know, something about the reputation of the agency -- 10 agents in the industry or whatever. I think there 11 was some limited -- because this agent was signed in 12 1989. 13 Q. And you're talking about Coastal? 14 A. Yes. So I don't really know what the 15 standards were in 1989. All I can do is say there's 16 a file and there's very limited sign-up information. 17 Q. How about in 1996? Do you know what the 18 standard would be for reviewing whether or not to 19 enter into an agency agreement with another company? 20 A. Actually I can't speak specifically to 21 standards at any given date. I think maybe financial 22 research and other criminal checks. Other things are 23 more -- are required today. I can't even say for 24 '96, but I think, you know, that is -- the 25 investigation of their background is a little more</p>

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<p>1 detailed than it might have been.</p> <p>2 Q. Is there a continuing review process of</p> <p>3 the agents?</p> <p>4 A. Well, there's an audit process. Are you</p> <p>5 saying like financial or other --</p> <p>6 Q. I am speaking in general terms with any</p> <p>7 agent that Coastal may -- any agent that Commonwealth</p> <p>8 may deal with.</p> <p>9 A. Do they re-review those credentials?</p> <p>10 Q. Exactly.</p> <p>11 A. Or the background information? I don't</p> <p>12 know the answer to that.</p> <p>13 Q. What are some of the roles that an agent</p> <p>14 of Commonwealth might perform?</p> <p>15 A. Well, the agents -- their functions are</p> <p>16 usually specified by the agency agreement and --</p> <p>17 Q. Let me back up a little bit. What type</p> <p>18 of agents do you have? Do you have -- do you only</p> <p>19 deal with agents such as Coastal, or do you have any</p> <p>20 other agency agreements of any other type of</p> <p>21 companies?</p> <p>22 A. As far as I know the agency agreements</p> <p>23 are, you know, typical with a title agent. I don't</p> <p>24 know what other company exactly you're thinking of</p> <p>25 but --</p>	<p>1 A. This is an agency agreement between</p> <p>2 Commonwealth and Coastal Title.</p> <p>3 Q. And, for the record this was entered</p> <p>4 April 12, 1989?</p> <p>5 A. Looks like a 12.</p> <p>6 Q. I am going to direct your attention to</p> <p>7 the first page. Number one, could you just read that</p> <p>8 to yourself.</p> <p>9 A. Okay.</p> <p>10 Q. Is Commonwealth claiming that Coastal</p> <p>11 did not have the authority to issue any of the</p> <p>12 policies that may be at issue in this case?</p> <p>13 MR. KOTT: Object to the form.</p> <p>14 MR. MCGOWAN: Can I hear the question</p> <p>15 again.</p> <p>16 (The pending question is read by the</p> <p>17 court reporter.)</p> <p>18 MR. MCGOWAN: Object to form. Go ahead.</p> <p>19 A. I haven't seen the policies but it's my</p> <p>20 understanding that -- actually the function -- does</p> <p>21 the agent have the ability to issue the policy? Yes.</p> <p>22 Q. You slightly changed my question around.</p> <p>23 A. I'm sorry.</p> <p>24 Q. That's okay. My question is whether or</p> <p>25 not Commonwealth is claiming that Coastal did not</p>
Page 111	Page 113
<p>1 Q. Okay. So what type of roles would say a</p> <p>2 title agent perform on behalf of Commonwealth?</p> <p>3 MR. MCGOWAN: Back in 1996 in north</p> <p>4 Jersey?</p> <p>5 MR. MEE: Yes.</p> <p>6 A. The standard functions are to produce</p> <p>7 title insurance commitments and issue policies on</p> <p>8 behalf of the company. I mean, that's their primary</p> <p>9 role is to issue the contracts for the company. And</p> <p>10 it's our position a lot of their other functions are</p> <p>11 their own business. If they're doing their own</p> <p>12 closings or something like that, this is a separate</p> <p>13 business function. Their relationship with the</p> <p>14 company is to issue title insurance contracts.</p> <p>15 Q. What about closing protection letters?</p> <p>16 A. They can issue closing protection</p> <p>17 letters.</p> <p>18 Q. Do you know if Coastal issued title</p> <p>19 protection letters on behalf of Commonwealth?</p> <p>20 A. It's my assumption that they issued all</p> <p>21 the letters in these files, yes.</p> <p>22 (Commonwealth-5, Agreement dated April</p> <p>23 12, 1989, is received and marked for identification.)</p> <p>24 Q. Exhibit 5. Do you recognize this</p> <p>25 document?</p>	<p>1 have the authority to issue policies.</p> <p>2 A. No.</p> <p>3 Q. To do -- you're not claiming that.</p> <p>4 Okay. On page two, F, could you read that to</p> <p>5 yourself, please.</p> <p>6 A. Okay.</p> <p>7 Q. Do you know if Coastal did that?</p> <p>8 A. Did what?</p> <p>9 Q. Did what it says in F.</p> <p>10 A. In connection with these transactions or</p> <p>11 all transactions?</p> <p>12 Q. Let's say all transactions.</p> <p>13 A. Did they record all papers which should</p> <p>14 be recorded? I can't say that I know that they did</p> <p>15 all of that.</p> <p>16 Q. Do you know if in these transactions</p> <p>17 they did that?</p> <p>18 MR. HAYES: Object to the extent it</p> <p>19 implies they had an obligation to do it in this</p> <p>20 transaction since it was a north Jersey closing. You</p> <p>21 can answer it.</p> <p>22 A. I forget the question.</p> <p>23 Q. In these transactions did Coastal</p> <p>24 perform as is stated in Paragraph F on page two?</p> <p>25 MR. KOTT: Objection.</p>

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<p style="text-align: right;">Page 114</p> <p>1 MR. McGOWAN: I will object to the form.  2 You can answer.  3 A. It's my understanding that they didn't  4 close these transactions, but some of the documents  5 may be delivered to them and they were not recorded  6 promptly. May have been delivered to them for the  7 purpose -- for recording and they may have not --  8 they may not have done that promptly.  9 Q. What is the basis of your understanding?  10 A. I believe -- I have read a lot of  11 material so I can't give you a document or something  12 that I referred to.  13 Q. Is that --  14 A. And I can't -- I know we had unrecorded  15 document claims, but I can't tie them to Coastal  16 either. I don't know.  17 Q. Let me ask you this: Is that  18 understanding based on your testimony today, or is  19 that based on your preparation for this case, for  20 your testimony here today?  21 MR. HAYES: Object to the form.  22 MR. KOTT: I object to form.  23 Q. Is your understanding based on the  24 conversations that have taken place right now during  25 your deposition?</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. KOTT: Objection to the form.  2 Q. What steps would Commonwealth take?  3 MR. KOTT: Objection to the form.  4 A. Again, I am not in the agency  5 department. I am assuming if an agent never properly  6 forwarded documents that were required that somebody  7 would have addressed that issue with them, and if  8 they were going to persist in that, then they would  9 have terminated them but again this is --  10 MR. McGOWAN: Let me interrupt for one  11 second. I thought you were done. This may be part  12 of the problem. Coastal in all great likelihood was  13 submitting and processing deals through this carrier  14 for non-Walsh related -- I mean they were doing a lot  15 of business. So it might be better to ask the  16 witness questions related to the Walsh loans as  17 opposed to just in general because there could be  18 hundreds of loans.  19 MR. MEE: Okay. I think we can narrow  20 that down but I'm focusing in on the agency agreement  21 between the two. So I mean if the extent of her  22 knowledge is only with regard to these Walsh loans or  23 -- I mean, it doesn't sound like she has knowledge.  24 MR. McGOWAN: It doesn't sound like it's  25 going to make any difference. That's fine. Just</p>
<p style="text-align: right;">Page 115</p> <p>1 A. No. During my deposition?  2 Q. Today.  3 A. No.  4 Q. I'm going to direct you to Paragraph I  5 down at the bottom of the same page. That paragraph  6 states: "To forward weekly or frequently, based upon  7 volume, copies of all policies and related commitment  8 vouchers to Commonwealth Land Title Insurance  9 Company," with an address, "to remit to Commonwealth  10 the net premium shown on the monthly statement  11 provided by the National Processing Center. It is  12 the intention of this provision that agents shall be  13 responsible and liable to Commonwealth for the net  14 fees due Commonwealth."  15 And my question is: Do you know if  16 Coastal forwarded copies of policies and other  17 documents to Commonwealth?  18 A. To NPC? I don't know but they must have  19 sent something over time or they wouldn't have been  20 kept on as an agent. Did they send the documents  21 related to this particular set of files? I don't  22 know.  23 Q. And what was the procedure -- strike  24 that. What was the procedure if Coastal did not  25 forward these documents to NPC?</p>	<p style="text-align: right;">Page 117</p> <p>1 bear that in mind. There's other business going on.  2 Q. Okay. Well, so with regard to the Walsh  3 loans, do you know if Commonwealth ever checked to  4 find out if the documents were being -- the documents  5 in Coastal's control were ever being delivered to  6 NPC?  7 A. I don't know.  8 Q. Is there a way for you to find out?  9 A. I don't know if you can search NPC  10 records just by the name of the agent. When I worked  11 there years ago you had to have the policy number and  12 then you could request the policy, but they didn't  13 have indexes of other sorts. I think they have  14 indexes by property and other things but whether -- I  15 imagine maybe they index them by agents. Are you  16 saying could I verify if somebody there sent them up  17 here back in 1996? Am I trying to track what was  18 sent here or am I trying to track what they have now?  19 Q. I'm asking you whether or not  20 Commonwealth ever tracked whether or not Coastal sent  21 those to NPC.  22 A. On a regular basis or for this?  23 Q. For these loans, for the Walsh loans.  24 A. I don't know.  25 Q. On page three, I'll direct you to</p>

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<p style="text-align: right;">Page 118</p> <p>1 Paragraph J, which states: "To refer to Commonwealth 2 all title questions and problems deemed doubtful by 3 agent, which may arise in connection with insuring of 4 titles and to follow the directions of Commonwealth 5 with respect to the resolution thereof." I believe 6 this falls under the obligations of the agent. 7 Now, do you know with regard to these 8 loans whether or not Coastal ever referred any 9 questions or problems deemed doubtful to 10 Commonwealth? 11 A. No. 12 Q. You don't know? 13 A. No, I don't know. 14 Q. Is there a way for you to find out? 15 A. I don't think so. Often agents would 16 call with a question and they could be answered 17 verbally. Sometimes they would fax a document if 18 there was a question, I don't know, about an easement 19 or something, and underwriting counsel might respond 20 to that and not necessarily keep those faxes on an 21 ongoing basis. 22 Q. They weren't recorded in the computer 23 system or anything like that? 24 A. Not back then. 25 Q. Paragraph N states: "To maintain the</p>	<p style="text-align: right;">Page 120</p> <p>1 so they had possession of them and probably reviewed 2 them in that context. 3 Q. When did they collect them? 4 A. After the claim. 5 Q. And do you still have them in your 6 possession? 7 A. I'm not sure we have all of them. I 8 know we have some of them. 9 Q. Paragraph T states: Not to do any 10 business in the name of Commonwealth except as 11 specifically authorized herein or as otherwise 12 expressly authorized by Commonwealth in writing." At 13 the bottom of four. I may have read that too 14 quickly. 15 A. What is the question? 16 Q. I haven't asked one yet. Did National 17 Home Funding or Robert Skowrenski ever sue 18 Commonwealth? 19 A. Yes. 20 Q. What happened with that lawsuit? 21 A. It was settled. 22 Q. And did Commonwealth ever pay fees on 23 behalf of Coastal in that settlement? 24 A. Not to my knowledge. I think the 25 settlement payment was to Skowrenski.</p>
<p style="text-align: right;">Page 119</p> <p>1 agent file register furnished by Commonwealth showing 2 all commitments, binders, reports of title and 3 policies issued and when requested by Commonwealth to 4 furnish a list of all commitments, binders and 5 policies remaining in agent's possession." 6 What's the point of that paragraph? 7 A. I don't know what the drafter's point of 8 it is, but I would think from a claims perspective, 9 particularly if you have an agency defalcation we 10 like to go in and know what commitments have been 11 issued that might be outstanding. It is a way to 12 track what policies the agents have issued. 13 Q. Do you know if Commonwealth ever 14 requested Coastal to furnish a list of all 15 commitments, binders and policies in their 16 possession? 17 A. I don't know. 18 Q. On page four, Paragraph P, it states: 19 "To permit Commonwealth at any time to examine or 20 audit all books and records, files, securities and 21 other papers and documents of agent relative to title 22 insurance written on behalf of Commonwealth." 23 Do you know if Commonwealth ever audited 24 Coastal's files that pertained to the Walsh loans? 25 A. Well, they collected the agent's files</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Was there a settlement agreement -- 2 A. Yes. 3 Q. -- among the parties? 4 A. Between Commonwealth and Skowrenski, I 5 believe. 6 Q. Just to go back a little bit, which is 7 Paragraph L on page three, it states: "Agent agrees 8 to be solely liable for all attorneys' fees, court 9 costs, expenses and loss or aggregate of losses 10 resulting from, A, fraud, negligence or misconduct of 11 agent, its officers or employees in the performance 12 of its duties as agent of Commonwealth." 13 Do you know what the settlement amount 14 was between Commonwealth and Mr. Skowrenski and NHF? 15 A. 50,000. 16 Q. Do you know how much Coastal paid in 17 that settlement? 18 A. Only from what I heard something earlier 19 today from someone else at the table. 20 Q. Okay. Do you know if there's a common 21 defense agreement among Coastal and Commonwealth in 22 this litigation? 23 A. No. 24 Q. You don't know? 25 A. Not to my knowledge, but I've never</p>

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<p style="text-align: right;">Page 122</p> <p>1 heard of that, no.</p> <p>2 Q. Do you know if Commonwealth has</p> <p>3 initiated a breach of contract action against Coastal</p> <p>4 under any of these provisions?</p> <p>5 A. I believe we have claims against Coastal</p> <p>6 and I'm not sure what they are. I imagine they're</p> <p>7 breach of contract.</p> <p>8 Q. Has Commonwealth made any demands on</p> <p>9 Coastal?</p> <p>10 MR. KOTT: What do you mean? I don't</p> <p>11 know what that means.</p> <p>12 Q. Any demands for fees?</p> <p>13 A. Attorneys fees?</p> <p>14 Q. Fees, compensation, whatever.</p> <p>15 A. We haven't --</p> <p>16 Q. With regard to the loans that are at</p> <p>17 issue in this case, has any demand been made upon</p> <p>18 Coastal?</p> <p>19 A. Not to my knowledge, other than the</p> <p>20 claims that are in the litigation.</p> <p>21 Q. No settlement demand has been --</p> <p>22 A. I am not aware of it.</p> <p>23 Q. Okay. I'm going to direct you to -- did</p> <p>24 Commonwealth ask Coastal to reimburse it for the</p> <p>25 \$50,000 paid to Mr. Skowrenski?</p>	<p style="text-align: right;">Page 124</p> <p>1 A. It was never paid in the form of a</p> <p>2 commission. "Agent shall remit to Commonwealth 20</p> <p>3 percent of the filed rate chargeable." I think the</p> <p>4 15 minimum is -- would be if the calculation under</p> <p>5 this formula didn't come up to \$15.</p> <p>6 Q. Right. I say commission because that's</p> <p>7 what it said in Paragraph C. It says, "services</p> <p>8 hereunder, a commission."</p> <p>9 A. It's expressed that way but the money</p> <p>10 never comes to the underwriter and then they pay them</p> <p>11 back. They remit and, you know, Exhibit A expresses</p> <p>12 it more the way I'm saying it, that is, may remit 20</p> <p>13 percent.</p> <p>14 Q. So it's just the difference between</p> <p>15 remittance and commission?</p> <p>16 A. Yeah. I don't know why the choice of</p> <p>17 wording in the actual agency agreement body.</p> <p>18 Q. Do you know if Coastal -- I'm sorry. Do</p> <p>19 you know if Commonwealth paid Coastal remittance or</p> <p>20 commissions on any of the Walsh policies?</p> <p>21 MR. KOTT: Object to the form. I think</p> <p>22 she said a few times that Commonwealth doesn't pay</p> <p>23 commissions. She said that a number of times.</p> <p>24 Q. I'm just reading Paragraph C which says</p> <p>25 that the services hereunder, a commission -- I</p>
<p style="text-align: right;">Page 123</p> <p>1 A. I don't know.</p> <p>2 Q. On page five, I believe this falls under</p> <p>3 "Obligations of Commonwealth." It states in</p> <p>4 Paragraph C: "To pay agent as compensation on</p> <p>5 transactions originated by agent for services</p> <p>6 hereunder a commission on the premium paid for title</p> <p>7 insurance on the following basis." Then there's an</p> <p>8 exhibit attached. It says, "The minimum premium to</p> <p>9 Commonwealth shall be \$15 for each policy." Why is</p> <p>10 it only --</p> <p>11 A. Let me see.</p> <p>12 Q. Why is the minimum payment \$15?</p> <p>13 A. Probably didn't want to process the</p> <p>14 paperwork for less than that I guess.</p> <p>15 Q. Who decided that amount do you think?</p> <p>16 A. I assume that it's a state manager or</p> <p>17 the national office.</p> <p>18 Q. Commonwealth?</p> <p>19 A. Maybe NPC. I'm not sure who established</p> <p>20 that.</p> <p>21 Q. Was it Commonwealth or Coastal?</p> <p>22 A. I am sure it would have been</p> <p>23 Commonwealth.</p> <p>24 Q. Do you know if Commonwealth paid these</p> <p>25 commissions to Coastal?</p>	<p style="text-align: right;">Page 125</p> <p>1 understand the distinction, but I'm reading -- as</p> <p>2 part of Paragraph C it says: "Hereunder a</p> <p>3 commission." So my question stands. Do you know</p> <p>4 whether or not Commonwealth paid to Coastal a</p> <p>5 commission or a remittance on any of the Walsh</p> <p>6 policies at issue in this case?</p> <p>7 A. I don't know that Commonwealth ever paid</p> <p>8 Coastal any commission. I don't -- just because I'm</p> <p>9 not sure.</p> <p>10 MR. MEE: Was that an objection.</p> <p>11 MR. McGOWAN: That's me and David having</p> <p>12 a secret conversation.</p> <p>13 Q. I'm sorry.</p> <p>14 A. I'm not sure my knowledge is broad</p> <p>15 enough to say with certainty they never paid them</p> <p>16 anything. That wouldn't be the way they would</p> <p>17 normally conduct business, and they would not take</p> <p>18 the money in and then pay the agent back a</p> <p>19 commission. They would accept the remittance. I am</p> <p>20 assuming that NPC would get the policies, they would</p> <p>21 see what the percentage was, they would invoice the</p> <p>22 amount due to the company, and then the amount due to</p> <p>23 the company would be forwarded to the company.</p> <p>24 Q. I am going to ask a broader question</p> <p>25 then. Did Commonwealth ever pay Coastal anything on</p>

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<p style="text-align: right;">Page 126</p> <p>1 any of the Walsh policies at issue in this case?</p> <p>2 A. Not to my knowledge.</p> <p>3 Q. And did Commonwealth receive remittances</p> <p>4 from Coastal on any of the Walsh loans at issue in</p> <p>5 this litigation?</p> <p>6 A. Again, that's what I was not able to</p> <p>7 verify with home office until I get the policy</p> <p>8 numbers.</p> <p>9 Q. Switching gears a little bit. What type</p> <p>10 of real estate closing services are offered by</p> <p>11 Commonwealth?</p> <p>12 A. In its direct operations?</p> <p>13 Q. Let's start there, sure.</p> <p>14 MR. KOTT: When?</p> <p>15 Q. 1996. We're talking about the time</p> <p>16 frame '96, '97 here.</p> <p>17 A. I know they had branch operations that</p> <p>18 would insure title. I am sure they would do reports</p> <p>19 of title if requested. I think the southern direct</p> <p>20 operation might have conducted closings.</p> <p>21 Q. And what role does a title insurance</p> <p>22 company play during a real estate closing, generally</p> <p>23 speaking?</p> <p>24 MR. HAYES: Object to the form of the</p> <p>25 question. Underwriter or title insurance agency?</p>	<p style="text-align: right;">Page 128</p> <p>1 or a loaner that certain things may happen during the</p> <p>2 course of a real estate closing?</p> <p>3 MR. KOTT: Objection.</p> <p>4 MR. McGOWAN: Objection to the form.</p> <p>5 A. The closing service letter is the</p> <p>6 document that provides for what acts of the attorney</p> <p>7 will be covered and to whom.</p> <p>8 Q. And certain of those acts would include</p> <p>9 things such as that a prior mortgage would be</p> <p>10 satisfied?</p> <p>11 A. If that's what was required by the</p> <p>12 lender's closing instructions.</p> <p>13 Q. With regard to the lender's closing</p> <p>14 instructions that a HUD would be submitted as well,</p> <p>15 would that be one of the things that --</p> <p>16 A. Would be covered by a closing -- --</p> <p>17 Q. If that were part of the closing</p> <p>18 instructions, let's say?</p> <p>19 A. No, I don't think it goes to the</p> <p>20 priority or the validity of the mortgage or -- the</p> <p>21 items covered by the closing protection letter.</p> <p>22 Q. What type of services are performed by</p> <p>23 the title agent before closing?</p> <p>24 A. Usually they get a request for a title</p> <p>25 commitment, and they will do appropriate searches of</p>
<p style="text-align: right;">Page 127</p> <p>1 Since both are often referred to as title companies.</p> <p>2 MR. McGOWAN: Objection. And neither</p> <p>3 attend the closing, so it depends on what you mean by</p> <p>4 your question too.</p> <p>5 Q. Do you understand my question?</p> <p>6 A. Are you asking does a direct operation</p> <p>7 perform -- what closing functions do they perform,</p> <p>8 direct op?</p> <p>9 Q. I guess my question is: In a real</p> <p>10 estate closing what is the function of a title</p> <p>11 insurance company?</p> <p>12 MR. KOTT: Object to the form.</p> <p>13 MR. McGOWAN: Object to the form. The</p> <p>14 agent is not at the real estate closing.</p> <p>15 Q. Do you understand my question?</p> <p>16 A. If you're talking about north Jersey</p> <p>17 where the agent is not responsible for the closing,</p> <p>18 that we've issued a closing service letter to an</p> <p>19 outside attorney?</p> <p>20 Q. Yes.</p> <p>21 A. Well, then the outside attorney is</p> <p>22 responsible for the closing of the transaction and</p> <p>23 the disbursement of funds and the clearing of liens</p> <p>24 or whatever is required.</p> <p>25 Q. Does it provide assurance to a purchaser</p>	<p style="text-align: right;">Page 129</p> <p>1 the title in the county and judgment searches and tax</p> <p>2 and assessment searches and review those. They put</p> <p>3 together the commitment under the requirements and</p> <p>4 the exceptions to title.</p> <p>5 Q. Is the commitment put together after</p> <p>6 those are -- those functions are performed?</p> <p>7 A. Yeah, because the information gleaned</p> <p>8 from those searches is the basis for the commitment.</p> <p>9 If the search shows there's a prior mortgage, they</p> <p>10 will raise a prior mortgage in Schedule B.</p> <p>11 Q. What about after the closing? What type</p> <p>12 of functions does the title agent perform?</p> <p>13 A. If the matter is closed by an outside</p> <p>14 attorney under the closing service letter that</p> <p>15 attorney usually will send back to the title agent</p> <p>16 maybe affidavits of title or other documents required</p> <p>17 by the agent in the commitment, or proof of</p> <p>18 satisfaction of the liens, and the agent will review</p> <p>19 those. They will run a search in the county to pick</p> <p>20 up the documents if the attorney sends them for</p> <p>21 recording, verify there's no intervening liens, issue</p> <p>22 the policy --</p> <p>23 Q. And --</p> <p>24 A. -- assuming all those requirements have</p> <p>25 been satisfied.</p>

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<p>1 Q. And these are functions that 2 Commonwealth's agents perform or were supposed to 3 perform? 4 A. Well, this is a general function of an 5 agent, yeah. 6 Q. General function of Commonwealth's -- 7 A. Sure. 8 Q. Okay. Were these functions performed by 9 Coastal as part of its agency agreement with 10 Commonwealth? 11 MR. MCGOWAN: Object to the form only 12 because she indicated that some of the functions were 13 to be performed by the closing attorney as opposed to 14 the title agency. 15 Q. The functions you indicated that were 16 supposed to be performed by a title agent, were those 17 functions performed by Coastal on behalf of 18 Commonwealth? 19 MR. KOTT: Object to form. 20 A. If their agency relationship with us is 21 -- yeah, I mean they can search the records, they 22 have the ability to clear exceptions on commitments. 23 They have the ability to issue the commitment. They 24 can take the proofs from the attorney that certain 25 things have been addressed or releases files. They</p>	<p>1 A. Yes. 2 Q. Is the answer yes, I know, or yes, they 3 have? 4 A. I'm sure they have just from experience 5 in the industry. 6 Q. You mentioned earlier certain functions 7 of the title agent such as record searches, title 8 searches, etcetera. For whose benefit are those 9 searches being conducted? 10 A. Search is done for -- not for the 11 purpose of distributing to outside parties but as the 12 basis for a title insurance commitment because the 13 agent is required to do a reasonable search to issue 14 a commitment, but the search is not in the normal 15 course distributed to outside parties. It's not for 16 the benefit of somebody outside the company or the -- 17 it's just the basis for the contract that we're going 18 to issue. We use it for our own purposes. 19 Q. So would you say that the benefit is for 20 the party paying for the assurance of the policy? 21 A. No. I am saying -- 22 MR. KOTT: You answered the question. 23 Q. If it's not for the assurance of the 24 party paying for the policy, then who is it for? 25 A. One, I believe it's required by</p>
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<p>1 can run down the title for the purpose of seeing that 2 the documents that are supposed to be the basis for 3 insurance are recorded and they have the right under 4 the agreement to issue a policy. 5 Q. And with regard to the Walsh policies at 6 issue here, was Coastal -- was Coastal Title supposed 7 to perform those agency obligations or functions on 8 behalf of Commonwealth? 9 MR. KOTT: Object to the form. 10 A. I haven't seen the policy. I'm sorry. 11 Repeat that. 12 Q. Was Coastal Title supposed to perform 13 the functions that you indicated earlier on behalf of 14 Commonwealth with regard to the Walsh loans at issue 15 in this case? 16 MR. KOTT: Objection. 17 A. I guess I'm going to say yes, these are 18 the functions -- these are things they had the 19 ability to do for the purpose of -- they have the 20 ability under the agreement to clear liens so they 21 have the ability to do that. If those things weren't 22 cleared, then they shouldn't have been issuing a 23 policy, but that's a different issue I guess. 24 Q. Do you know if Commonwealth has ever 25 issued a title policy absent a marked-up commitment?</p>	<p>1 regulation that we do a reasonable search, and, two, 2 it benefits the underwriter so that we're insuring 3 something that we have actually looked at and tried 4 to limit our exposure. If we didn't do a search at 5 all we wouldn't know if there are easements on the 6 property and our policy would be issued exposing us 7 to a great many claims. So we want to do a 8 reasonable search for our own benefit and then issue 9 the commitment, which is the contract we're offering 10 to the -- 11 Q. Who pays for that? 12 A. The search? 13 Q. Yes. 14 A. It's part of the charge. It's -- I 15 believe -- I don't know if it's a passed -- I believe 16 on the invoice there's an itemized set fee if that's 17 still the current way. 18 Q. Well, is it generally the purchaser who 19 pays for this? 20 A. Yes. 21 Q. Who ensures the accuracy of the 22 information that is on a title commitment? 23 MR. KOTT: Objection to the form. 24 Q. Who's responsibility is it to ensure the 25 accuracy of the information on that -- on the title</p>

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<p style="text-align: right;">Page 134</p> <p>1 commitment?</p> <p>2 MR. McGOWAN: Objection.</p> <p>3 MR. KOTT: Object.</p> <p>4 A. Are you saying ensure the accuracy? Is</p> <p>5 the agent responsible for making sure the --</p> <p>6 MR. MEE: What is the objection?</p> <p>7 MR. KOTT: It assumes that somebody is</p> <p>8 responsible to ensure that and that's not been</p> <p>9 established.</p> <p>10 Q. Is anybody responsible for assuming that</p> <p>11 the information on the title commitment is accurate?</p> <p>12 A. The commitment is also a contract and</p> <p>13 the terms of that contract are part of the document.</p> <p>14 There are certain protections for parties. I think</p> <p>15 reliance on the commitment if it's inaccurate. If</p> <p>16 your question goes beyond to a closing point, whether</p> <p>17 a requirement of the commitment has to be satisfied</p> <p>18 and so I can't say there's liability if --</p> <p>19 Q. I think we're missing each other here.</p> <p>20 A. Okay.</p> <p>21 Q. What I'm wondering is: Someone puts</p> <p>22 together a title commitment.</p> <p>23 A. Okay.</p> <p>24 Q. Who makes sure or is anybody responsible</p> <p>25 to make be sure that the information that goes on</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. How would you characterize it then?</p> <p>2 A. Proposed insured. I don't want to</p> <p>3 recharacterize it.</p> <p>4 Q. What does marking up a title binder</p> <p>5 mean?</p> <p>6 A. My understanding of a marked-up binder</p> <p>7 is that somebody, it could be a representative of the</p> <p>8 company if they attended the closing, or in this case</p> <p>9 the attorney may do this, at the closing they will</p> <p>10 just take a copy of the commitment and markup what</p> <p>11 liens they have addressed and they mark them "omit,"</p> <p>12 or what -- you know, they might mark the description</p> <p>13 insured, what we're going to insure, what we're going</p> <p>14 to keep in the policy, what we're going to remove.</p> <p>15 They date it the date of the closing.</p> <p>16 Q. Okay. Is a closing service letter --</p> <p>17 when is a closing service letter effective?</p> <p>18 A. Well, it's effective -- I mean the</p> <p>19 closing has to take place. I mean, the letter I</p> <p>20 guess is effective as of the date of the letter, but</p> <p>21 obviously the closing has to take place, I guess, for</p> <p>22 some damage to -- the lender has to fund or something</p> <p>23 in order for, I guess, the claim to be made for the</p> <p>24 loss. I am not understanding it?</p> <p>25 Q. Maybe -- well, you named -- you named</p>
<p style="text-align: right;">Page 135</p> <p>1 that title commitment is accurate?</p> <p>2 A. The agent is doing the search work and</p> <p>3 issuing the commitment so the agent is responsible if</p> <p>4 there's a defect in that. I mean, the contract is</p> <p>5 going to govern the agent's responsibility or</p> <p>6 actually the underwriter's with the insured. Would</p> <p>7 the agency have some liability to the underwriter?</p> <p>8 They would under the agency agreement if they did a</p> <p>9 defective search or missed something in the search.</p> <p>10 Q. And who is the recipient of the benefits</p> <p>11 of the commitment? Let me back up. Is there a</p> <p>12 beneficiary of a title commitment?</p> <p>13 A. You mean a third party? I mean the</p> <p>14 commitment has the named insured.</p> <p>15 Q. Okay. So that --</p> <p>16 A. It's a contract though. I don't know</p> <p>17 the benefit, exactly what you mean by the benefit,</p> <p>18 but they're offered a contract, which they then meet</p> <p>19 the requirements and then give the benefit of the</p> <p>20 policy.</p> <p>21 Q. So the proposed insured or the named</p> <p>22 insured is the proposed beneficiary of the contract</p> <p>23 under the title commitment?</p> <p>24 A. I hate to recharacterize it other than</p> <p>25 the name that's on the -- the proposed insured.</p>	<p style="text-align: right;">Page 137</p> <p>1 two dates, the date of the letter or the date of the</p> <p>2 closing. Is it the date on the letter or the date of</p> <p>3 the close?</p> <p>4 A. Well, the letter is issued, I mean it's</p> <p>5 a valid --</p> <p>6 Q. It's effective as of the date issued?</p> <p>7 A. It's a valid document I guess.</p> <p>8 Q. And in Commonwealth's -- what would you</p> <p>9 say is a valid -- how would you define a valid first</p> <p>10 lien?</p> <p>11 MR. HAYES: Under the law or under the</p> <p>12 policy?</p> <p>13 Q. How would Commonwealth define a valid</p> <p>14 first lien?</p> <p>15 MR. HAYES: Under the law or under the</p> <p>16 policy? They're different.</p> <p>17 MR. MEE: I am asking the witness if she</p> <p>18 has a definition for a first lien.</p> <p>19 MR. HAYES: Then I object to your</p> <p>20 question as being overly broad.</p> <p>21 Q. Do you have a definition in your mind as</p> <p>22 to what a valid first lien is?</p> <p>23 A. I'm thinking -- off the top of my head I</p> <p>24 am thinking that it's got to be a lien -- first lien</p> <p>25 priority and recorded and not subject to attack on a</p>

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<p style="text-align: right;">Page 138</p> <p>1 variety of bases I guess.</p> <p>2 Q. Why would a lender have closing</p> <p>3 instructions? What is the purpose of a lender's</p> <p>4 closing instructions?</p> <p>5 A. Well, they want to tell whoever is</p> <p>6 closing, I guess, what their expectations are,</p> <p>7 whether they expect it to be a first lien, whether</p> <p>8 there are certain fees that are due them they want to</p> <p>9 collect. I mean, I think there's a whole list of</p> <p>10 things usually that appear on that, and I assume that</p> <p>11 the lender -- they're going to be benefitted by that</p> <p>12 and they want to ensure that the attorney addresses</p> <p>13 those items.</p> <p>14 Q. And does Commonwealth's closing</p> <p>15 protection letters ensure that a lender's closing</p> <p>16 instructions are followed?</p> <p>17 A. Only to the specified matters in the</p> <p>18 letter. The letter details the protections. Not</p> <p>19 everything in the closing instructions that the</p> <p>20 attorney failed to comply with would be covered.</p> <p>21 Q. Okay. What are typical closing</p> <p>22 instructions issued by a lender?</p> <p>23 MR. HAYES: Objection. Assuming there</p> <p>24 is.</p> <p>25 THE WITNESS: Excuse me?</p>	<p style="text-align: right;">Page 140</p> <p>1 protection letter?</p> <p>2 A. Our position is it would not because the</p> <p>3 closing protection letter only covers the validity or</p> <p>4 priority of the lien of the mortgage.</p> <p>5 Q. Why don't we take a quick break.</p> <p>6 (A recess takes place.)</p> <p>7 Q. So you stated earlier when the closing</p> <p>8 protection letter is effective. When is a title</p> <p>9 commitment effective?</p> <p>10 A. Well, it has an effective date I believe</p> <p>11 on it. And, of course, it has to be forwarded to</p> <p>12 the -- whoever is going to get it, but I think it's</p> <p>13 effective as of the effective date, which is not</p> <p>14 necessarily the date it's sent out.</p> <p>15 (Commonwealth-6, Letter dated October</p> <p>16 30, 1996, is received and marked for identification</p> <p>17 Q. I've marked as Exhibit 6 a closing</p> <p>18 protection letter dated October 30, 1996. So the</p> <p>19 effective date of this policy would be October 30,</p> <p>20 1996?</p> <p>21 MR. HAYES: Object to the form.</p> <p>22 MR. KOTT: Object to the form.</p> <p>23 A. Yeah, I would say the effective date of</p> <p>24 this letter is October 30th.</p> <p>25 Q. Under file number where it says CT-18724</p>
<p style="text-align: right;">Page 139</p> <p>1 MR. HAYES: Assuming there are.</p> <p>2 Q. Assuming there are closing instructions.</p> <p>3 MR. KOTT: Typical is what he's</p> <p>4 objecting to.</p> <p>5 Q. Assuming there are closing instructions,</p> <p>6 what are typical closing instructions by a lender?</p> <p>7 A. I'm not sure that I've studied them for</p> <p>8 all the various things that are unrelated to the</p> <p>9 title insurance. I examine them to see whether they</p> <p>10 require a first lien or loans that are second liens.</p> <p>11 You know, I didn't usually -- details what some of</p> <p>12 the fees. I don't know if there's yield spread</p> <p>13 premiums. I think some of these charges are detailed</p> <p>14 on there.</p> <p>15 Q. Is a filling out of a HUD-1 form, is</p> <p>16 that a general requirement of a lender's closing</p> <p>17 instructions? Have you ever seen that?</p> <p>18 A. I don't know if in general, but I think</p> <p>19 sometimes they require them to be submitted prior to</p> <p>20 closing for review.</p> <p>21 Q. Do you know what a HUD-1 form is?</p> <p>22 A. Yes.</p> <p>23 Q. If an attorney filled out a HUD-1 form</p> <p>24 knowing that it contains certain information that was</p> <p>25 fraudulent, would that be a violation of a closing</p>	<p style="text-align: right;">Page 141</p> <p>1 and it has a little "a."</p> <p>2 A. Yes.</p> <p>3 Q. Do you know what that "a" stands for?</p> <p>4 A. I don't.</p> <p>5 Q. Do you know who issues the file numbers?</p> <p>6 A. That's the agency's own file numbering</p> <p>7 system.</p> <p>8 MR. KOTT: CT as in Coastal Title, not</p> <p>9 Commonwealth Title.</p> <p>10 Q. Down at the bottom of this letter it</p> <p>11 says, New Jersey Land Title Insurance Rating Bureau,</p> <p>12 and then on the right-hand side it says NJRB6-04 and</p> <p>13 a date, August first, 1994. Do you know what that</p> <p>14 stands for, what that means?</p> <p>15 A. The New Jersey Land Title Insurance</p> <p>16 Rating Bureau is an entity that some of the title</p> <p>17 companies join, and that entity will submit forms for</p> <p>18 filing with the Department of Insurance.</p> <p>19 Q. Is this an approved form by that entity?</p> <p>20 A. Well, the entity is basically a number</p> <p>21 of underwriters so I guess they agree. I don't know</p> <p>22 the actual mechanics of its workings, but I guess</p> <p>23 they formulate this document and the rating bureau</p> <p>24 submits it to the Department of Insurance for</p> <p>25 approval.</p>

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<p style="text-align: right;">Page 142</p> <p>1 Q. So this -- would this have been approved 2 by the Department of Insurance? 3 A. That's what it's representing and this 4 is I guess -- I assume is the filing number and a 5 date. 6 (Commonwealth-7, Exhibit B, is received 7 and marked for identification.) 8 Q. So if we're looking at this letter here, 9 this closing protection letter, the lender would be 10 National Home Funding Successors and/Or Assigns? 11 A. Yes. 12 Q. And Commonwealth would be the company 13 that is agreeing to reimburse National Home Funding, 14 its successors or assigns in connection with any 15 loss? 16 A. Covered by the letter, yeah. 17 Q. And that loss would include fraud or 18 misapplication by the issuing agent or attorney in 19 handling funds? 20 A. In connection with the matters set forth 21 in Paragraph 1 above, yes. 22 Q. Up at the top of the letter, you see 23 that, it says Audit No. X01-105630? 24 A. Yes. 25 Q. Do you know what that means?</p>	<p style="text-align: right;">Page 144</p> <p>1 A. No. They would perform an audit 2 periodically of the agent. As I said I don't 3 understand the significance of that so... 4 Q. Do you, and by you I mean Commonwealth, 5 do you know what table funding is. Have you ever 6 heard that terminology? 7 A. Yes. 8 Q. Can you tell me what that means? 9 A. My understanding is that one lender is 10 the party that I guess requested the commitment and 11 is acting as the lender but the funds that are going 12 to be -- the funding for that transaction is actually 13 coming from I think another lender, a wholesale 14 lender. I'm not sure of the terminology. 15 Q. I'm going to show you what's been marked 16 as Exhibit 7. It says Exhibit B on the front page 17 because this was actually attached to the Fourth 18 Amended Complaint. I don't know if you had an 19 opportunity to look at the Fourth Amended Complaint 20 filed by Walsh Securities. 21 A. I did take a look at it. 22 Q. This would be a closing protection 23 letter issued by Fidelity. 24 MR. HAYES: Is this seven? 25 MR. MEE: Yes.</p>
<p style="text-align: right;">Page 143</p> <p>1 A. I don't. 2 Q. Are there any definitions of -- as part 3 of this closing protection letter? 4 A. The letter is -- 5 Q. Standalone document? 6 A. Yes. 7 Q. Up at the top where it says, "National 8 Home Funding, its successors and/or assigns," what 9 does that mean? 10 A. Usually the commitment issued I guess to 11 the lender also contains similar language, and I 12 think this parallels the commitment language, meaning 13 that it would run to National Home Funding, its 14 successors and/or assigns. 15 Q. I'm sorry. Just to go back for a 16 second. Jumping around, but the audit number up at 17 the top, who would have done the audit? 18 MR. KOTT: Objection to form. 19 A. I am not -- I don't know the 20 significance of that number, and I don't know if 21 that's a Commonwealth number at all, so I don't know 22 who would have done an audit because I don't know how 23 to tie that to -- 24 Q. Would Commonwealth have performed audits 25 on closing protection letters?</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. Down at the bottom of this page, as you 2 compare it to what's been marked as Exhibit 8 -- I 3 mean Exhibit 6 -- 4 A. Right. 5 Q. -- it doesn't show that there's any 6 identification by the NJRB. 7 A. Right. 8 Q. What does that mean? 9 A. This is a Fidelity letter and I'm not 10 sure it has any significance. Well, I guess it's 11 been photocopied so I don't know if it was on the 12 original. I don't know why the filing information 13 doesn't appear on the letter. I don't know if it's 14 required to be on there or whether this is how one 15 entity printed it, one of the title companies printed 16 it. I mean, the form is not printed by the state or 17 the rating bureau so one company might have printed 18 it with that information detailed on it and another 19 not, I don't know, or this could be a copy of some 20 sort. 21 Q. Does it indicate that that -- I'm sorry, 22 Exhibit 7 is not a letter issued under -- by the 23 entity, the National Land Title Insurance Rating 24 Bureau? 25 MR. KOTT: Objection to the form.</p>

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## D. SULLIVAN

<p style="text-align: right;">Page 146</p> <p>1 Q. Sorry. New Jersey Land Title Insurance 2 Rating Bureau? 3 MR. KOTT: Objection. 4 A. Does it indicate it is not a filed form? 5 Q. That this letter is not issued by the 6 New Jersey Land Title Insurance Rating Bureau and I 7 mean Exhibit 7. 8 MR. KOTT: Objection to the form. 9 MR. HAYES: Objection to the form. 10 A. The letter is not issued by the rating 11 bureau, but each company issues its own letters. 12 Q. Okay. On the second page of Exhibit 13 7 -- 14 A. Uh-huh. 15 Q. -- there's a Paragraph F. Could you 16 just read that to yourself. And if you look at page 17 two of Exhibit C -- sorry, Exhibit 6, Paragraph F is 18 not on that second page of Exhibit C -- Exhibit 6. 19 A. Okay, yes. 20 Q. Do you know what Paragraph F provides? 21 MR. KOTT: Objection to the form. 22 A. I'm reading it, yes. 23 Q. And do you know why that provision isn't 24 in Commonwealth's closing protection letter? 25 A. I believe I do. I believe this was an</p>	<p style="text-align: right;">Page 148</p> <p>1 (A discussion takes place off the 2 record). 3 Q. The purpose of title insurance is to 4 insure what? 5 A. Well, you can request insurance to 6 insure -- 7 MR. MAGNANINI: We will withdraw the 8 question. 9 (Commonwealth-8, Deed dated 12/16/96, is 10 received and marked for identification.) 11 Q. I've put in front of you what's been 12 marked as Exhibit 8, which is a copy of a deed dated 13 December 16, 1996 from Osis Corporation to G.J.L. 14 Limited. We retrieved this document from the 15 Monmouth County records website. Up at the top of 16 the document there's a handwritten "R&amp;R to." Do you 17 know what that would mean? 18 A. Record and return. 19 Q. And do you know what G.J.L. Limited is? 20 A. I don't know. It's obviously the 21 grantee on the deed. 22 Q. And the date on this that this property 23 was deeded is December 16. Is that right? 24 A. Yes. 25 Q. And can you tell from this document what</p>
<p style="text-align: right;">Page 147</p> <p>1 error in the form. I understand that the rating 2 bureau submitted an incorrect draft and distributed 3 it I guess to its members, and it was later 4 corrected, but before the effective date of the 5 letter, and distributed with Paragraph F because this 6 is the form filed with the state. 7 MR. KOTT: "This" being -- referring to 8 Exhibit 7. So you believe Exhibit 7 is the form that 9 was filed with the state? 10 THE WITNESS: Correct. 11 Q. Why didn't -- why did Coastal issue 12 these separate CPLs? 13 MR. KOTT: Objection to the form. 14 MR. McGOWAN: Objection to the form. 15 A. I would have to say that Coastal issued 16 the form that Fidelity directed. They issued a 17 form -- and I'm not sure of the history of what was 18 given to Coastal with respect to Commonwealth, 19 whether they had an incorrect version, a later 20 corrected version, or I haven't found that out, the 21 history of it, because I believe they have issued -- 22 at least on one transaction I've seen a form with F 23 in it. 24 Q. Okay. 25 MR. HAYES: Off the record.</p>	<p style="text-align: right;">Page 149</p> <p>1 the sale amount is? 2 A. Well, recites that the transfer was made 3 for consideration of \$1,500. 4 Q. On the second page there's an insurance 5 title commitment. It says it's by Commonwealth up at 6 the top and there's a file number CT-18724. How come 7 that -- how come that file number doesn't have an "a" 8 after it? 9 A. I don't know. 10 Q. Okay. And do you know if this was 11 issued by Coastal? 12 A. The reason this is in this deed is, I 13 presume, many attorneys will just take the 14 description out of the commitment and insert in the 15 deed in lieu of typing up the description themselves. 16 This is not part of the commitment. It's something 17 somebody has removed from the commitment and used. 18 Q. But can you tell down at the bottom 19 whether or not this was issued by Coastal Title, this 20 title commitment? 21 A. Well, it says it's prepared by an 22 attorney. 23 Q. I'm sorry, second -- 24 A. Again, this is a page removed from the 25 title commitment and inserted for -- by the attorney.</p>

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<p style="text-align: right;">Page 150</p> <p>1 Q. Okay.</p> <p>2 MR. HAYES: The witness is referring to</p> <p>3 the second page of the exhibit.</p> <p>4 (Commonwealth-9, Deed dated 12/31/96, is</p> <p>5 received and marked for identification.)</p> <p>6 Q. What I've given to you, what's been</p> <p>7 marked as Exhibit 9, is a deed dated December 31,</p> <p>8 1996 from G.J.L. to Rafael Bustos, Senior. Can you</p> <p>9 tell from this document who is the closing attorney</p> <p>10 on this sale?</p> <p>11 A. You can't tell who the closing attorney</p> <p>12 is. You can tell who prepared it and who it was</p> <p>13 recorded and returned to.</p> <p>14 Q. Well, can you tell who prepared it up at</p> <p>15 the top?</p> <p>16 A. Richard Pepsny is written in as the</p> <p>17 preparer.</p> <p>18 Q. And the sale amount, do you know what</p> <p>19 the sale amount is based on this document?</p> <p>20 A. Transfer amount was recited as 186,500.</p> <p>21 Q. On the second page of this document it</p> <p>22 appears to be a title insurance commitment issued by</p> <p>23 Coastal Title, and if you look at the top, again the</p> <p>24 file number, it says CT-18724(a). Do you know why</p> <p>25 that "a" would be there?</p>	<p style="text-align: right;">Page 152</p> <p>1 guess?</p> <p>2 A. I can make an educated guess. I would</p> <p>3 assume that they're on the same property and they may</p> <p>4 have used the search work here for the later</p> <p>5 transaction as well and just updated it.</p> <p>6 Q. Okay.</p> <p>7 (Commonwealth-10, Deed dated 1/7/97, is</p> <p>8 received and marked for identification.)</p> <p>9 Q. I'm handing you what's been marked</p> <p>10 Exhibit 10, which also comes from Coastal Title's</p> <p>11 documents. It's a deed from Rafael Bustos to Capital</p> <p>12 Assets dated January 7, 1997. Can you tell who</p> <p>13 prepared this document?</p> <p>14 A. It says it's prepared by Lorraine King.</p> <p>15 Q. And this document was supposed to be</p> <p>16 returned to whom?</p> <p>17 A. It states that it was supposed to be</p> <p>18 recorded and returned to Stanley Yacker.</p> <p>19 Q. On the second page of this document,</p> <p>20 again it's a file number CT-18724(a). Why wouldn't</p> <p>21 there be a (b) after that?</p> <p>22 MR. KOTT: Objection to the form.</p> <p>23 MR. McGOWAN: Same objection.</p> <p>24 A. I think Coastal would have to answer</p> <p>25 that.</p>
<p style="text-align: right;">Page 151</p> <p>1 MR. HAYES: Object to the form.</p> <p>2 MR. McGOWAN: Objection to the form</p> <p>3 also.</p> <p>4 MR. KOTT: Objection.</p> <p>5 A. It would be speculation.</p> <p>6 MR. MAGNANINI: For the record, this is</p> <p>7 from Coastal Title. We can go off the record.</p> <p>8 (A discussion takes place off the</p> <p>9 record).</p> <p>10 Q. Going back to exhibit -- going back to</p> <p>11 page two of Exhibit 8, and if you compare the</p> <p>12 description of this property with that in Exhibit 9</p> <p>13 it's the same, and if you look at the file number up</p> <p>14 at the top, does it have the same file number?</p> <p>15 A. No.</p> <p>16 Q. What is different?</p> <p>17 A. Same number but one has an additional</p> <p>18 letter designation.</p> <p>19 Q. Which one? Is that Exhibit 9?</p> <p>20 A. Exhibit 9 has an "a" in it.</p> <p>21 Q. Do you know why they used the same</p> <p>22 number?</p> <p>23 A. Again, I could speculate but I don't</p> <p>24 know why they did.</p> <p>25 Q. Would you like to make an educated</p>	<p style="text-align: right;">Page 153</p> <p>1 MR. KOTT: So the witness has sustained</p> <p>2 my objection. I just want to note that.</p> <p>3 MR. MAGNANINI: Off the record.</p> <p>4 (A discussion takes place off the</p> <p>5 record).</p> <p>6 Q. The description of this land and the</p> <p>7 file number on this insurance -- this title insurance</p> <p>8 commitment are the same.</p> <p>9 A. I'm sorry. Say that again.</p> <p>10 Q. The description of the land --</p> <p>11 A. Right.</p> <p>12 Q. -- and the file number --</p> <p>13 A. Uh-huh.</p> <p>14 Q. -- are the same.</p> <p>15 A. As?</p> <p>16 Q. As the earlier two exhibits, nine and</p> <p>17 eight.</p> <p>18 A. Okay.</p> <p>19 Q. Let's go with nine.</p> <p>20 MR. HAYES: She's repeatedly said</p> <p>21 they're not commitments.</p> <p>22 MR. KOTT: Is the question: Is the</p> <p>23 second page of Exhibit 9 the same as the second page</p> <p>24 of Exhibit 10? Is that the question?</p> <p>25 MR. MEE: Yes.</p>

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<p style="text-align: right;">Page 154</p> <p>1 A. Appears to be, yes.</p> <p>2 Q. Why would they -- why would Coastal have</p> <p>3 used the same title insurance commitment on both of</p> <p>4 these transactions?</p> <p>5 MR. KOTT: Objection to form.</p> <p>6 MR. McGOWAN: Objection.</p> <p>7 A. These are not commitments. These</p> <p>8 descriptions were extracted from a commitment. I</p> <p>9 don't know that they were extracted from different</p> <p>10 commitments.</p> <p>11 Q. Why would Coastal Title have extracted</p> <p>12 the same title insurance commitment to be used in two</p> <p>13 separate transactions?</p> <p>14 MR. HAYES: Objection.</p> <p>15 MR. McGOWAN: Same objection.</p> <p>16 MR. HAYES: She's testified previously</p> <p>17 Coastal didn't do this. The attorneys did this who</p> <p>18 prepared the deeds.</p> <p>19 (Commonwealth-11, Information Sheet, is</p> <p>20 received and marked for identification.)</p> <p>21 Q. This is a title commitment issued by</p> <p>22 Commonwealth, or, I'm sorry, issued by Coastal on</p> <p>23 behalf of Commonwealth. Commitment date at the top</p> <p>24 of the second page is October 14, 1996. Does this --</p> <p>25 this looks like a commitment to you?</p>	<p style="text-align: right;">Page 156</p> <p>1 A. Fee simple interest in the land</p> <p>2 described in this commitment is owned at the</p> <p>3 commitment date by Cristo Property Management, LTD by</p> <p>4 deed from Osis Corp. dated blank recorded blank in</p> <p>5 the Monmouth County Clerk's/Register's office in deed</p> <p>6 book blank page blank.</p> <p>7 I'm trying to tie these together. The</p> <p>8 commitment date is October 14, '96. It says Cristo</p> <p>9 is in title. You're giving me a deed dated December</p> <p>10 of '96 saying Osis is conveying to G.J.L. and what is</p> <p>11 the question?</p> <p>12 Q. Who has ownership on the date of this</p> <p>13 commitment letter?</p> <p>14 MR. KOTT: Objection to the form.</p> <p>15 A. I don't think I can tell that. Who has</p> <p>16 title as of the date of the letter?</p> <p>17 Q. The date of the commitment.</p> <p>18 MR. KOTT: Objection to the form. The</p> <p>19 commitment is dated October 14, 1996 and he's asking</p> <p>20 you if you can tell who has title as of that date.</p> <p>21 A. I can't.</p> <p>22 Q. The commitment says that the interest in</p> <p>23 the land is owned at the date on this commitment date</p> <p>24 by Cristo Property?</p> <p>25 A. Uh-huh.</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Yes, it looks like a commitment and some</p> <p>2 additional -- a couple of attachments.</p> <p>3 Q. On paragraph three there looks to be</p> <p>4 like there are a few spaces where things are not yet</p> <p>5 filled in. Why wouldn't that information be filled</p> <p>6 in at the time of the commitment date?</p> <p>7 MR. KOTT: Are you referring to</p> <p>8 paragraph three on Schedule A, counselor?</p> <p>9 Q. Paragraph three on CTB1155.</p> <p>10 A. I assume it's not completed because the</p> <p>11 document was not of record. Maybe it was in the</p> <p>12 process of being recorded or they didn't have -- the</p> <p>13 commitment date is October 14, which may be behind</p> <p>14 also, but, in any event, I am assuming this was not</p> <p>15 of record, this deed, as of the date of the</p> <p>16 commitment.</p> <p>17 Q. And going back to Exhibit 10 -- hang on</p> <p>18 one second. Exhibit 8, wouldn't a title search of</p> <p>19 this property have picked up that as of the date</p> <p>20 October 14 it was owned by Osis Corporation?</p> <p>21 A. I'm looking from the deed from Osis</p> <p>22 to -- the commitment says it's -- a deed or title is</p> <p>23 in Cristo by deed from Osis Corp.</p> <p>24 Q. Why don't you read paragraph three of</p> <p>25 Schedule A on Exhibit 11 for the record.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q. And the commitment date is October 14.</p> <p>2 A. Okay. The commitment itself is stating</p> <p>3 it's owned by Cristo, but it's reciting that it's by</p> <p>4 a deed that is yet to be dated perhaps or recorded.</p> <p>5 So if you're asking me: What does the commitment</p> <p>6 actually state? It says it's owned by Cristo by this</p> <p>7 but can I tell? I don't have any recording</p> <p>8 information there that documents that.</p> <p>9 Q. I can represent to you that that -- that</p> <p>10 this property that's identified in Exhibit 8 was not</p> <p>11 in G.J.L.'s possession until December 16 of 1996.</p> <p>12 G.J.L. is an alter ego of Cristo. So why would</p> <p>13 Coastal be issuing a commitment, title commitment,</p> <p>14 two months prior on a property and stating that it</p> <p>15 was owned by Cristo on a property that was not owned</p> <p>16 by Cristo?</p> <p>17 MR. McGOWAN: Objection. How could she</p> <p>18 possibly know why Coastal did that? If you want to</p> <p>19 ask the question ask Coastal.</p> <p>20 MR. HAYES: Let me object to the form.</p> <p>21 This witness has not said the date of the commitment</p> <p>22 is the date that it's issued. She indicated that's</p> <p>23 the effective date and in her testimony said there</p> <p>24 could be a difference between the effective date and</p> <p>25 the date it's actually issued. I am -- if you want</p>

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<p>1 to ask her why, she can explain to you why that is.</p> <p>2 MR. MEE: I would still like to see if</p> <p>3 she can answer the question.</p> <p>4 Q. Can you answer the question?</p> <p>5 MR. KOTT: Do you remember the question?</p> <p>6 (The pending question is read by the</p> <p>7 court reporter.)</p> <p>8 A. I think I'm going to have to say that</p> <p>9 Coastal Title would have to answer.</p> <p>10 Q. Does that seem unusual to you?</p> <p>11 A. Does it seem unusual? I guess aside</p> <p>12 from the dates, which the dates might be explainable,</p> <p>13 it seems like maybe they're doing it in advance. And</p> <p>14 as you say it could have gone into G.J.L. or Cristo.</p> <p>15 Maybe they decided to take the title in a different</p> <p>16 name. Is it unusual to see something that's -- well,</p> <p>17 I guess I shouldn't ask the question.</p> <p>18 Q. Do you think it's unusual?</p> <p>19 A. What? Excuse me.</p> <p>20 Q. Seeing a commitment two months prior to</p> <p>21 the deed?</p> <p>22 MR. HAYES: Object. Again, she's not</p> <p>23 said that's the date it's issued.</p> <p>24 A. This is the commitment date, which</p> <p>25 represents the county board date for searching. It's</p>	<p>1 A. Again, that is the search to date.</p> <p>2 That's the date to which they search the records,</p> <p>3 which may not be the true date, although it's</p> <p>4 generally much closer to the true date than a county</p> <p>5 date would be.</p> <p>6 Q. Okay. Why would Coastal Title be</p> <p>7 conducting -- you said an upper court search?</p> <p>8 A. Yes.</p> <p>9 MR. McGOWAN: Same objection.</p> <p>10 Q. On Mr. Bustos? On a property not owned</p> <p>11 but that's being purported to be sold to him -- not</p> <p>12 owned by Cristo but being purportedly sold to him. I</p> <p>13 am going to strike that question.</p> <p>14 Can you tell -- going back to CTB 1164,</p> <p>15 can you tell when this document was printed? It's in</p> <p>16 the middle of the page, I believe.</p> <p>17 A. Oh, I see, 10/30/96.</p> <p>18 Q. So if this property wasn't owned by</p> <p>19 Cristo Management, why are they conducting -- why is</p> <p>20 Capital -- Coastal Title conducting an upper court</p> <p>21 search on Mr. Bustos?</p> <p>22 MR. McGOWAN: Same objection.</p> <p>23 A. Well, Coastal probably could answer</p> <p>24 this. I'll assume that in the normal course a lender</p> <p>25 requires you run a judgment search against the</p>
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<p>1 not the current date. County records could be a</p> <p>2 month, two months behind. It depends on the</p> <p>3 individual counties and how backlogged they are in</p> <p>4 getting documents of record, and we can only search</p> <p>5 up until the point that they have actually recorded</p> <p>6 up to. So if they're three weeks, four weeks behind</p> <p>7 we don't issue a commitment with today's date. We</p> <p>8 only issue this as of the date we were able to search</p> <p>9 to.</p> <p>10 Q. Okay. How about that it was issued</p> <p>11 without certain -- it was issued with blanks in it.</p> <p>12 Is that unusual?</p> <p>13 A. I've seen commitments in this fashion or</p> <p>14 about to be recorded. Sometimes you see that in the</p> <p>15 context of having foreclosures where they're still</p> <p>16 waiting for the Sheriff's deed to come in and then</p> <p>17 the property is being transferred. So I have seen it</p> <p>18 without the recording information. Does it represent</p> <p>19 a large percentage of the commitments issued? I</p> <p>20 would say probably no.</p> <p>21 Q. I would direct you to CTB 1164. Do you</p> <p>22 know what this document would be? Do you know what</p> <p>23 this is?</p> <p>24 A. It's an upper court lien search.</p> <p>25 Q. Can you tell when it was conducted?</p>	<p>1 borrower, purchaser, and in connection with I guess</p> <p>2 the commitment they've ordered a 20-year search</p> <p>3 against Mr. Bustos to ensure that there are no</p> <p>4 judgment liens against him.</p> <p>5 Q. Just going back real quick, the date</p> <p>6 that this was actually sold to Mr. Bustos --</p> <p>7 MR. KOTT: Referring to Commonwealth-9.</p> <p>8 A. Okay.</p> <p>9 Q. -- is December 31, 1996.</p> <p>10 A. Okay.</p> <p>11 Q. Doesn't Exhibit 11 suggest that Cristo</p> <p>12 owned this property on October 14?</p> <p>13 A. I would say owned or about to own based</p> <p>14 on the fact that there's no deed date, but again</p> <p>15 that's my assumption of what that means.</p> <p>16 Q. Why if the upper court search was</p> <p>17 conducted or printed on October 30th, why is that --</p> <p>18 why is that different than the date -- the commitment</p> <p>19 date on CTB1155?</p> <p>20 A. Commitment date is the search date in</p> <p>21 the county. It's not real, the true date. It</p> <p>22 doesn't reflect when the commitment was issued,</p> <p>23 depending on how far behind the board date the county</p> <p>24 was, so if, for instance, they ordered the search on</p> <p>25 the 30th and they printed the commitment on the 30th,</p>

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1 we -- maybe the board date was only a week -- or how  
2 many weeks is that behind? This is not -- this is  
3 not the date.

4 Q. Okay.

5 (Commonwealth-12, Schedule A, is  
6 received and marked for identification.)

7 Q. I'm giving you Exhibit 12, which is  
8 another copy of Commonwealth's title insurance  
9 commitment dated October 14, same file number with  
10 the (a) after it. Is this a marked-up title  
11 commitment?

12 A. It does not look like a marked-up  
13 commitment to me.

14 Q. Okay.

15 (Commonwealth-13, Invoice dated  
16 10/30/96, is received and marked for identification.)

17 Q. I'm giving you what's been marked as 13.  
18 It's an invoice from Coastal Title to Stanley Yacker  
19 on the same property as identified by the title  
20 number. The date on this document is October 30,  
21 1996. Does this suggest that the title commitment  
22 was issued as of October 30, 1996?

23 A. I think it's the date the invoice was  
24 printed. Whether or not it was issued, I don't know.

25 Q. How much is the invoice for?

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1 A. \$1,113 is the total.

2 Q. And how much of this would have gone to  
3 Coastal and how much to Commonwealth, approximately?

4 A. I don't know if I can do the math in my  
5 head and I don't know that -- some of the endorsement  
6 charges may be kept by the agent, I'm not sure. The  
7 closing protection letter fee should come to us  
8 according to the agency agreement that I saw. Unless  
9 it was amended it would be -- we would get 20  
10 percent. I think the agent keeps --

11 MR. KOTT: 20 percent of what, Donna, of  
12 the premium?

13 A. That's what I'm looking for. I guess  
14 the premium. Base examination charge -- I am  
15 assuming the agent keeps. These are out of pocket,  
16 lien searches.

17 Q. But there is a charge for the closing  
18 service letter?

19 A. There is.

20 Q. And is it unusual that an invoice would  
21 have been sent for a property not yet in Cristo's  
22 possession, not yet owned by Cristo?

23 A. Well, this is a preparation of a  
24 commitment for a future event, so I would think if  
25 Coastal thought there was going to be a second

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1 transaction where there was going to be a sale, that  
2 they might prepare the commitment and an invoice and  
3 I think that's what they did.

4 Q. And that would have been -- that would  
5 have conformity to the agency agreement between  
6 Commonwealth and Coastal?

7 A. Well, the agency agreement wouldn't  
8 control specifically the handling of this  
9 transaction. Are you saying underwriting guidelines?

10 Q. Yes.

11 A. Which I haven't been able to find  
12 memoranda so I don't know if there was anything at  
13 that time.

14 Q. Do you know how much Commonwealth  
15 received on this?

16 A. Again, it's 20 percent, and I am not  
17 trying to do the math in my head at this point, of  
18 the premium.

19 MR. HAYES: The question is: Do you  
20 know how much Commonwealth received?

21 A. Actually received? I guess I don't know  
22 that at all because I can't trace the -- or I haven't  
23 gotten the policy numbers to submit to home office to  
24 figure out what was actually received.

25 (Commonwealth-14, Copy of Check 2238, is

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1 received and marked for identification.)

2 Q. What I've given to you is a copy of a  
3 check from Coastal Title's files. Can you tell what  
4 the amount is in the check?

5 A. It's \$1,113.

6 Q. So it's likely that Mr. Yacker paid this  
7 invoice that's in Exhibit 13.

8 A. It's for the same amount. There's  
9 nothing on the check to detail what it's for.

10 Q. Well --

11 A. Wait, here there is. Something Bustos.  
12 Bustos.

13 Q. I'm just directing your attention -- for  
14 the record the -- on Exhibit 13 the transaction is  
15 identified as the Bustos Cristo Property at 138 Ridge  
16 Avenue.

17 A. I think the check says Bustos Senior,  
18 138 -- so it's likely it's for the same.

19 Q. So how much did Coastal -- sorry. How  
20 much did Commonwealth receive based on this invoice?

21 A. Again, we don't know how much we  
22 actually received, if anything, but -- and, again, I  
23 assume that we -- what they should have remitted  
24 would have been 20 percent of the premium and service  
25 letter fee, and I'm not sure that all the other

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<p style="text-align: right;">Page 166</p> <p>1 charges -- I believe most of these charges are kept  2 by the agent because they're out-of-pocket expenses.  3 I'm not sure if the ALTA endorsement -- I'm not sure  4 if the ALTA 1 endorsement has a fee in it and if so  5 who is entitled to receive that, whether the agent  6 keeps that or we keep that.  7 Q. Okay.  8 (Commonwealth-15, Summit Bank  9 Spreadsheet dated 5/22/97, is received and marked for  10 identification.)  11 Q. What I've given to you as Exhibit 15 are  12 documents received from Mr. Yacker. I direct your  13 attention to the third page, SYS 7083. You see the  14 second entry on January 28, 1997?  15 A. The third entry I guess. Right?  16 Q. Yeah. Does that suggest to you that Mr.  17 Yacker paid this invoice from Commonwealth to Coastal  18 with that check identified as Exhibit 14?  19 A. Yeah, I see the check. Is this -- you  20 know, this is an account statement and I guess the  21 numbers represent disbursements that were made or  22 checks that cleared, and assuming that's the case,  23 then, yes, it looks like this third entry is the  24 check that you have shown me to pay the invoice.  25 Q. Going down to entry -- looks like 26225,</p>	<p style="text-align: right;">Page 168</p> <p>1 you come to find that Mr. Yacker was voiding checks?  2 A. I am unaware of that. If we reviewed  3 that I don't know.  4 Q. Okay.  5 (Commonwealth-16, Coastal Title Agency  6 Document dated 10/29/96, is received and marked for  7 identification.)  8 Q. Could you tell me what Exhibit 16 is?  9 MR. HAYES: Do you want to venture a  10 guess as to what 17 is?  11 A. You're asking: What is this exhibit?  12 Q. Yes. Do you know why -- what this  13 exhibit is? What this document is?  14 A. Appears to be some type of title  15 insurance order perhaps or some kind of document of  16 Coastal Title's.  17 Q. Up at the top under the number right  18 here, do you know why that "a" would be handwritten?  19 MR. MCGOWAN: Same objection as before.  20 She can't possibly know.  21 A. I do not.  22 Q. Down at the bottom where it says,  23 "Recorded By," do you know what that means?  24 A. No. I'm not sure it means recorded.  25 Q. Okay. And the simultaneous issue amount</p>
<p style="text-align: right;">Page 167</p> <p>1 it shows that a payment was made to the Monmouth  2 County Clerk for D707.50.  3 A. I'm not sure -- over here. Okay.  4 26225. Yes.  5 Q. Can you venture a guess as to what that  6 amount might be for?  7 A. It would only be a guess.  8 Q. What would that be?  9 A. Obviously it's the recording of some  10 documents, but I don't know the total, what that  11 represents.  12 Q. And then moving down to the next entry  13 it shows that that check has been voided. Can you  14 venture a guess as to why that check may have been  15 voided?  16 A. No.  17 Q. And then moving down even further, the  18 same date, it says Monmouth County Clerk record for  19 Bustos Junior, that's an \$81 check. Can you venture  20 why that check may have been voided?  21 A. No.  22 Q. Can you venture any guess as to why Mr.  23 Yacker would be voiding checks for recording fees?  24 A. No.  25 Q. In the course of your investigation did</p>	<p style="text-align: right;">Page 169</p> <p>1 right there, is that a fee that Commonwealth would  2 have collected?  3 A. I don't know the answer to that.  4 Q. How about the premium?  5 A. Premium, we would have been expecting to  6 receive our split according to the agency agreement.  7 Q. Do you know what the simultaneous issue  8 amount is for?  9 A. It's for the issuing a simultaneous  10 policy. For instance, if you issue an owner's  11 policy, they will issue a loaner's. Usually you're  12 getting the first one for the full fee and then you  13 get the second one for \$25 because really the  14 liability falls within the larger -- it's not a  15 separate liability, but under an owner's policy you  16 would payout -- any amount you pay on the loan would  17 reduce the owner so...  18 Q. So this would suggest that a policy was  19 issued?  20 A. Well, I don't know what this document  21 actually is. But either it was requested or might  22 have been issued. I don't know.  23 Q. Would this document have been received  24 by Commonwealth?  25 A. I don't believe so, no.</p>

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<p style="text-align: right;">Page 170</p> <p>1 (Commonwealth-17, Closing Instructions 2 by Walsh Securities, is received and marked for 3 identification.) 4 Q. Do you know what this document is? 5 A. States that it's the closing 6 instructions by Walsh Securities. 7 Q. If these closing instructions were not 8 followed by Mr. Yacker would Commonwealth provide 9 coverage under its closing protection letter? 10 MR. KOTT: I object. And the ground of 11 my objection is this is repetitive. She's been asked 12 maybe six times and each time she said we provide 13 coverage to the extent it was set forth in the 14 closing protection letter, meaning paragraphs one and 15 two. 16 Q. Let me -- 17 MR. KOTT: She's been asked that 18 question a whole bunch of times. 19 Q. I am going to try to clear up the 20 objection. And maybe I will and maybe I won't. I've 21 handed you Exhibit 6 and that's the closing 22 protection letter on the closing for the property on 23 Exhibit 17. So -- 24 MR. HAYES: Can I ask: Do we have a 25 signed copy of that letter? Do you know?</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. MEE: General question. 2 A. Again, this is the same question I 3 think. This letter, assuming there are not other 4 defenses to the letter, we only provide protection as 5 set forth in paragraphs one and two. 6 Q. Okay. Can I direct you to page two on 7 Exhibit 17. Give me a minute. If the documents 8 pertaining to the sale of this property to Bustos 9 were not recorded would there be coverage under the 10 closing protection letter? 11 A. I am not -- I assume -- leaving other 12 defenses to the letter, would this language generally 13 protect for the failure to record the documents? 14 Q. Not generally. Specifically with regard 15 to that closing protection letter, if the mortgage 16 and deed on this sale were not recorded would 17 Commonwealth provide coverage under the closing 18 protection letter? 19 MR. KOTT: Assuming no other defenses to 20 the letter? 21 MR. HAYES: And assuming the loss 22 sustained as a result of that failure to record? 23 MR. MEE: Yes. 24 A. Well, assuming no other defenses, this 25 language insures the lien priority. So obviously if</p>
<p style="text-align: right;">Page 171</p> <p>1 MR. MEE: That's not signed. 2 MR. HAYES: What is that? 3 MR. MEE: That's one is not signed. 4 MR. HAYES: I am asking: Do you have a 5 signed copy. If you don't know, that's fine. 6 MR. MEE: I don't know off the top of my 7 head. 8 Q. So, again, this closing protection 9 letter was issued for this closing. Is that right? 10 A. Other than the issue that I have that 11 the letter is addressed to National Home Funding and 12 the closing instructions are from Walsh Securities 13 they do appear to pertain to the same property and 14 same attorney to close it. 15 Q. So let me rephrase then. If this were 16 the closing protection letter on the sale of this 17 property, if Exhibit 6 were the closing protection 18 letter on the sale of the property on Exhibit 17, and 19 supposing that Mr. Yacker did not follow the closing 20 instructions that are identified on Exhibit 16 -- 17, 21 would Commonwealth provide coverage under its closing 22 protection letter? 23 MR. KOTT: Fail to follow them in what 24 way, counsel? 25 A. I am afraid --</p>	<p style="text-align: right;">Page 173</p> <p>1 the lien has not been established by recording and 2 there's a loss suffered, then that would fall within 3 the parameters of that protection. 4 Q. What about under a title -- if a title 5 policy were issued? What about under a title policy, 6 same situation, the mortgage and the deed were not 7 recorded? 8 A. It's unlikely the policy would be issued 9 without the deed and mortgage recorded because they 10 usually wait for the recording information to insert 11 in the policy and use the recording date as the date 12 of the policy. So in most circumstances it wouldn't 13 be issued in that fashion. 14 Q. Okay. 15 (Commonwealth-18, Final Judgment, is 16 received and marked for identification.) 17 Q. One follow-up question. If the premium 18 was paid by Yacker on that policy -- on a policy but 19 a policy was not issued, what would Commonwealth have 20 done with that money? 21 A. The premium was issued based on the 22 commitment that had been issued to Yacker and you're 23 saying the documents were not recorded? 24 Q. Yes. 25 A. I would say that we would not issue a</p>

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<p style="text-align: right;">Page 174</p> <p>1 policy because the requirements in the commitment  2 haven't been met to record the documents. That may  3 call into play whether there's coverage for that  4 under the closing service letter. So I mean I would  5 address that issue if there was a closing service  6 letter that was viable.  7 Q. Okay. But a separate question: With  8 regard to any premiums that were paid on the  9 commitment that were received by Commonwealth, what  10 would Commonwealth have done with those --  11 A. It's unlikely that Commonwealth itself  12 would have received its portion of the premium if the  13 documents weren't recorded because the policy  14 wouldn't be issued and they usually remit when the  15 policy is issued.  16 Q. I'm handing you Exhibit 18. And this is  17 again a document that was retrieved from the Monmouth  18 County Records website. Are you familiar with tax  19 sales at all?  20 A. A little, yeah.  21 Q. Do you know what this document is?  22 A. A final judgment. I am assuming Asbury  23 Park must have foreclosed a tax sale certificate.  24 Q. On the last page it says that G.J.L.  25 Limited is the purchaser of title as of December 16,</p>	<p style="text-align: right;">Page 176</p> <p>1  2 CONTINUED DIRECT EXAMINATION BY MR. MAGNANINI:  3 Q. I will just ask the question. Assuming  4 that, as you said, there's no other defenses and  5 Walsh Securities had suffered a loss, would there be  6 coverage under the CPL for the failure to file the  7 Bustos deed and, therefore, the property is lost due  8 to a tax lien foreclosure?  9 A. Assuming no other defenses, which could  10 be I guess a myriad of things, we're saying that the  11 deed was not recorded and they were not joined,  12 therefore, in the foreclosure action and --  13 Q. By "they," you mean Walsh Securities?  14 A. Yeah. Whoever is the holder of the  15 indebtedness, I guess. They would have I think a  16 claim for the failure of the attorney to record to  17 the extent that that actually resulted in the loss.  18 It might be limited to property value.  19 Q. I didn't ask about the damages. There's  20 a disagreement among counsel based on the case law  21 about what damages are under the -- are covered by  22 the CPL, whether it's the mortgage, the interest,  23 attorneys' fees, but I think my question was simply  24 that: If, as we found, the Bustos mortgage was never  25 recorded, and again without getting into the whole</p>
<p style="text-align: right;">Page 175</p> <p>1 1996. Do you know why Mr. Bustos is not listed as  2 the last owner?  3 A. I do not.  4 Q. Since there was no mortgage or deed ever  5 recorded -- since there was no mortgage or deed ever  6 recorded on this property, was there any way for  7 Walsh Securities to recover on any deficiency of the  8 money that it loaned?  9 MR. KOTT: Objection to the form.  10 A. Since there was no mortgage or deed  11 recorded, could they recover on a deficiency?  12 Q. Of a loan. Going back to these prior  13 exhibits, Walsh Securities loaned the funds to Bustos  14 to purchase this property.  15 MR. KOTT: Wasn't the deed to Bustos  16 after this? Go ahead.  17 Q. So --  18 MR. KOTT: So what you're saying is that  19 Bustos took it in 1996.  20 MR. MAGNANINI: December 31.  21 MR. KOTT: And what you're saying is if  22 the Bustos deed was not recorded -- what is the rest  23 of it?  24 Q. What is the remedy to Walsh Securities  25 for having funded that loan?</p>	<p style="text-align: right;">Page 177</p> <p>1 other defenses or anything, would there be coverage  2 under the CPL for any loss to the lender?  3 A. Because of the priority of the lien was  4 compromised by the failure of the attorney, I would  5 say that would be a matter that was intended to be  6 protected.  7 MR. KOTT: By the closing letter.  8 A. By the closing service letter.  9 (Commonwealth-6A, Signed Copy of Exhibit  10 6, is received and marked for identification.)  11 (A recess takes place.)  12 Q. Miss Sullivan, if I ask just jump back  13 and wrap up with just a few follow-ups to Mr. Mee's  14 questions.  15 Earlier in the deposition you gave a  16 definition of what a valid first lien is. Can you  17 define that according to the title policy?  18 A. Okay. I think I'm going to use --  19 Q. If you can.  20 A. I don't recall exactly what I said  21 before but I would assume it has to be a lien  22 recorded in first position in the land records and,  23 you know, not subject to some type of attack, which  24 would fall within covered risk under the policy.  25 Q. Is that the same definition that's used</p>

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<p style="text-align: right;">Page 178</p> <p>1 in, let's say, a definition of law but one that's 2 been developed by courts in the State of New Jersey? 3 A. No, I just thought that one up. I'm 4 just trying to come up with one to answer your 5 question. I don't know of a specific definition 6 probably by anybody. 7 Q. I was asking the question actually as a 8 follow up to Mr. Hayes' objection, which was -- the 9 question was: What is a valid first lien? And we 10 asked for Commonwealth's view on that and Mr. Hayes' 11 objection was: Do you mean at law, according to case 12 law, or according to the policy, and is there a 13 difference in your mind? 14 A. Well, what is a valid first lien is 15 almost going to be speak for itself. What is covered 16 under the policy, you know, still going to be 17 determined by the terms of the policy. So I'm trying 18 to envision a scenario where the lien could be 19 invalid in some fashion, but it doesn't fall within 20 the covered risks of the policy, or it may be an 21 excluded matter so -- you know. 22 Q. So -- 23 A. I guess I'm having a hard time. 24 Q. Can you give me an example? 25 A. I don't know.</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Earlier, Miss Sullivan, you had said 2 that a small number of title commitments are issued 3 without the recording information. Can you estimate 4 what percentage? Is it less than five? 5 A. This is a wild guess since I don't see a 6 big sample. I would say probably -- I don't know 7 that it would be more than five, but the majority are 8 not going to be sequential like that I would think. 9 Q. When you were preparing for the 10 deposition did you notice any of the title 11 commitments from one sale to another in any of the 12 documents you may have looked at? 13 A. I didn't view the documents for that 14 purpose to see the sequencing had changed, no. 15 Q. Did Commonwealth have a policy that if a 16 premium had been paid but title insurance policy was 17 not issued that the premium -- the agent should 18 return the premium? 19 A. I don't know that there's any express 20 policy on that. 21 Q. Was that Commonwealth's expectation, 22 that if a title insurance policy was not issued 23 Commonwealth wouldn't receive its 20 percent of the 24 premium? 25 A. If a policy wasn't issued I am assuming</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. A lien that's not -- actually let me 2 just phrase the question for you. An example of a 3 lien that's not a valid first lien but is not covered 4 by the policy? 5 MR. HAYES: The purpose of my 6 distinction was that something might not be a valid 7 first lien by looking at it strictly under the law, 8 but can be established as such through the conduct of 9 the title company under the policy. For example, a 10 lien may be recorded in second position, however, the 11 title company may establish those rates under the 12 policy that the first recorded mortgage is invalid, 13 agree to be subordinated, may have been paid off, 14 etcetera so -- 15 MR. MAGNANINI: That's what you were 16 driving at and that's what I didn't know. 17 A. I think I am off on the wrong track. 18 MR. HAYES: I don't want to mislead. 19 Q. I was just wondering -- but it doesn't 20 sound like there's a different -- you have a 21 different view of a valid first lien under the 22 policy, under the law or what you would consider a 23 valid first lien? 24 A. I'm assuming that it's -- that the term 25 almost speaks for itself and...</p>	<p style="text-align: right;">Page 181</p> <p>1 because either the transaction didn't close or if 2 they remitted the premium to the agent I guess it 3 closed, but I guess I don't understand your question. 4 So the transaction closed, the agent was paid but no 5 policy was issued? 6 Q. Correct. 7 A. And for what reason I don't know. Did 8 the attorney then decide not to get insurance and no 9 policy is ever issued to bind Commonwealth, you know, 10 or some -- I guess I would have to know -- and I 11 don't know that we have given any specific direction 12 to agents on that. 13 Q. To the agents. Okay. 14 A. Although Commonwealth wouldn't expect to 15 have a premium remitted for a policy it didn't issue 16 I would imagine, assuming there was no expectation of 17 coverage. I mean, obviously under a commitment there 18 can still be an expectation that a policy will be 19 issued in the future or something, but, I mean, if 20 we're not going to be bound to any liability under a 21 commitment or a policy, then I guess we don't expect 22 to receive a premium. 23 Q. During Commonwealth's investigation into 24 the claims submitted by Walsh Securities did 25 Commonwealth learn that -- I think it's over a</p>

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1 two-day period, I believe it's April 8 and 9, 1997,  
2 Coastal Title recorded approximately 220 mortgages  
3 and -- not mortgages, excuse me, deeds related to the  
4 properties at issue in this litigation?

5 A. Did we discover that?

6 MR. HAYES: Let me object to the form.  
7 I'm not sure if there's anything establishing those  
8 numbers.

9 Q. And that -- I'm giving you the round  
10 numbers. The dates I know. I think so far what I  
11 have seen is about 216 deeds and some of them have  
12 gone back months, ten months, from the closing that  
13 were all recorded April 8 and 9th of 1997.

14 A. I don't know what might have been known.  
15 I am not familiar with that fact even.

16 Q. In Commonwealth's experience was it out  
17 of the ordinary to have a large number of deeds  
18 related to -- strike that.

19 Was it out of the ordinary to have deeds  
20 recorded ten months after the closing?

21 A. It was not a preferred way of having  
22 things done. Obviously that exposes the company to  
23 risk. Assuming there's coverage, you know, it leaves  
24 us exposed to intervening liens. Was it common? I  
25 would have to say no, that's probably not common.

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1 Obviously there's recording delays accounting for  
2 that but that usually wouldn't run ten months.

3 Q. Do you recall: During your  
4 investigation was there any discussion with Coastal  
5 Title about the recording of approximately 200  
6 something deeds over two days for some of the  
7 closings going back ten months?

8 A. I don't know.

9 Q. One question we never did ask. When is  
10 the title insurance policy effective?

11 A. The policy is usually issued with an  
12 effective date of the recording date. Well, I don't  
13 know what you mean -- I guess that's what you mean by  
14 effective. The policy date is the recording date  
15 generally in New Jersey.

16 Q. The recording date of the deed?

17 A. Or the mortgage.

18 Q. Or the mortgage?

19 A. Under the policy.

20 Q. Do you know: Did Commonwealth ever send  
21 a letter to Walsh Securities denying coverage under  
22 either the closing service letters or the title  
23 policies?

24 A. I don't believe any denial letter was  
25 sent.

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1 Q. In preparing for the deposition did you  
2 review Walsh Securities' responses to Commonwealth's  
3 Interrogatories?

4 A. I don't think so.

5 Q. I will show it to Mr. Kott. I am not  
6 going to mark it, but if you could take a look, that  
7 is a breakdown of the fraud loans that Walsh alleges  
8 are part of the fraud and they're all -- the sum  
9 total of them, they're actually broken down -- I  
10 believe it's the first four pages are Commonwealth.

11 MR. KOTT: The document that Mr.  
12 Magnanini has put in front of the witness is a  
13 14-page document, eight and a half by 14, and the  
14 lower right corner it says, "Exhibit B to Walsh  
15 Securities First Supplemental Response to  
16 Commonwealth's First Set of Interrogatories."

17 Q. If you could just take a look, like I  
18 said, if you look under the title insurance company.

19 A. Title insurance amount?

20 Q. Off the record.

21 (A discussion takes place off the  
22 record).

23 Q. Back on the record. The document, as  
24 Mr. Kott pointed out, is Exhibit B to Walsh  
25 Securities' Supplemental Responses to Commonwealth's

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1 First Set of Interrogatories, and it's actually  
2 divided into two sections. So it's pages one through  
3 seven and then pages eight through fourteen. And if  
4 you can -- if you look, the first three and a half  
5 pages on each part, as you can see it says, "Title  
6 Company." Right?

7 A. Okay.

8 Q. And then if you can flip back there's --  
9 three and a half pages are loans that either Walsh  
10 alleges either closing -- service protection letters  
11 or title insurance policies were issued by  
12 Commonwealth. Do you have any basis to disagree with  
13 what's in Schedule B about the number of loans,  
14 properties, the identification that were -- either  
15 had Commonwealth issue a CPL or a title insurance  
16 policy?

17 MR. KOTT: What's the question? Are you  
18 asking her: Does she have any reason to believe that  
19 everything in those pages is correct?

20 Q. Right. Were properties that were  
21 insured by Commonwealth.

22 A. I haven't reviewed this document or  
23 compared it to anything so I am not in a position to  
24 say that.

25 Q. What I'm trying to get at is: Of the

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1 various defenses that have come up I haven't heard a  
2 defense that Walsh hasn't identified what properties  
3 it alleges were part of the scheme that were insured,  
4 and insured I mean either having a CPL or a title  
5 insurance policy issued by Commonwealth?

6 MR. KOTT: Let me answer that you have  
7 given us information as to what you believe the  
8 properties are that were insured by Commonwealth and  
9 Commonwealth is responsible for and you have given  
10 that in discovery.

11 Q. What my question actually should be --  
12 occasionally we can dance -- is: Has Commonwealth's  
13 investigation uncovered information other than what  
14 was provided by Walsh Securities about properties  
15 that were part of the fraud that either -- that were  
16 insured by Commonwealth?

17 A. So are we aware of other properties that  
18 fall within the same kind of scheme that were not  
19 identified --

20 Q. Right.

21 A. -- by Walsh? I am not aware of them,  
22 any.

23 Q. Do you know if anyone in Commonwealth  
24 is? By you, you mean --

25 A. I don't think there's anyone left.

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1 Q. Okay.

2 MR. HAYES: I'm sorry. Is the question:  
3 Are there more properties than you have identified?  
4 Is that the question?

5 Q. I wanted to find out -- that was the  
6 first part of it. Was there any additional  
7 properties other than what Walsh has identified?

8 A. I just don't have -- I don't know.

9 Q. Okay. And then during Commonwealth's  
10 investigation other than the defenses that were  
11 raised -- so during Commonwealth's investigation has  
12 it been able to agree or concur with Walsh the  
13 properties that Walsh has put forward as being  
14 alleged to be part of the scheme? I am not asking  
15 this well at all, am I?

16 A. I'm not sure that I can -- try to say it  
17 again.

18 Q. Are you in a position to dispute that  
19 the properties that Walsh alleges are part of the  
20 scheme are not part of the fraud scheme that Walsh  
21 has made this claim on?

22 A. I don't have any information on that or  
23 I don't know that.

24 Q. Okay. Did Commonwealth decide not to  
25 issue any title insurance policies on properties

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1 funded by Walsh Securities after 1997?

2 A. I don't know that they barred them. I  
3 know they requested that people contact the office  
4 and discuss any -- if they had any pending sales.

5 Q. That were to be funded by Walsh  
6 Securities?

7 A. Yeah, I believe, yeah.

8 Q. Do you know if anyone contacted  
9 Commonwealth about those?

10 A. I don't know that.

11 Q. Where would you find that?

12 A. I don't know. I think that the person  
13 they would have contacted was Nancy Koch, but I'm not  
14 sure that I have any records of hers. I wouldn't  
15 know where to find out that kind of information.

16 Q. Has Commonwealth obtained any admissions  
17 from any other defendant in the lawsuit during its  
18 investigation?

19 MR. KOTT: Sorry?

20 Q. Has Commonwealth obtained any admissions  
21 during its investigation from any other defendants in  
22 the lawsuit?

23 A. Well, I haven't reviewed all the  
24 discovery. So I don't know that I'm in a position to  
25 answer that.

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1 Q. How about Commonwealth's own internal  
2 investigation, the documents it may have?

3 A. Has anybody made an admission?

4 Q. Yes. Against their interest.

5 A. I am not aware of any.

6 Q. Okay. Has Commonwealth agreed to pay  
7 any claims on behalf of any defendant in this  
8 lawsuit?

9 A. To my knowledge Commonwealth has not  
10 paid any on behalf or to.

11 Q. On behalf of any other defendant?

12 A. Any other defendant other than Walsh --  
13 well, Walsh is a plaintiff. I guess I am not  
14 following.

15 MR. KOTT: Did Commonwealth agree to pay  
16 any figures that Coastal had to pay, that Kane had to  
17 pay, that any of the other defendants had to pay.

18 A. I think we've only addressed claims that  
19 have been made to us on commitments or service  
20 letters. I am not aware that we've paid anything for  
21 any other party.

22 Q. Do you know who those claims were made  
23 by? You said earlier you thought it was Stern  
24 Lavinthal for Walsh Securities. Were any made by  
25 Banker's Trust or Temple Inland or, I will give you

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1 another name, Gruntal Financial?

2 A. Again, there's some confusion. I  
3 thought Stern Lavinthal was somehow involved with  
4 Banker's and you say that maybe is incorrect so I  
5 don't know. I did run a couple of other names  
6 through the claim system. I'm not sure -- but no  
7 payments were made to those entities. Gruntal  
8 Financial, I'm trying to remember. There might have  
9 even been claims unrelated to this, might not even  
10 have been in New Jersey. I just ran them in the  
11 system but I didn't -- any names that I found didn't  
12 have any payments made to them.

13 Q. Has any other defendant in this lawsuit  
14 agreed to make payments on behalf of Commonwealth if  
15 liability is established against it?

16 A. Not to my knowledge.

17 Q. That would make you happy. Thank you,  
18 Miss Sullivan, for your time. No further questions.

19 MR. KOTT: On the record. Plaintiff's  
20 counsel will be the custodian of all the original  
21 exhibits and I assume get all counsel in the room a  
22 copy.

23 (The deposition is concluded at 5:40  
24 p.m.)  
25

Page 191

1 CERTIFICATE.

2  
3 I, JANET BAILYN, a Notary Public and  
4 Certified Court Reporter of the State of New Jersey,  
5 do hereby certify that prior to the commencement of  
6 the examination DONNA SULLIVAN was duly sworn by me  
7 to testify the truth, the whole truth and nothing but  
8 the truth.

9 I DO FURTHER CERTIFY that the foregoing  
10 is a true and accurate transcript of the testimony as  
11 taken stenographically by and before me at the time,  
12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a  
14 relative nor employee nor attorney nor counsel of any  
15 of the parties to this action, and that I am neither  
16 a relative nor employee of such attorney or counsel,  
17 and that I am not financially interested in the  
18 action.  
19  
20

21 Notary Public of the State of New Jersey  
22 My commission expires February 3, 2013  
License No. XI00970

23 Date: June 1, 2010  
24  
25

49 (Pages 190 to 191)

VERITEXT REPORTING COMPANY

212-267-6868

516-608-2400

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